SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No.

GRACE LEWIS CONNELL, MYRLE C. ADAMS, AND MARY ADAMS, PETITIONERS,

vs.

EVA S. WALKER

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

INDEX

	Original	Print
Record from district court of Ramsey County	1	1
Clerk's certificate (omitted in printing)	1	
Supplemental and amended order settling statement of case, etc	2	1
Notice of appeal	4	2
Stipulation settling statement of case, etc	6	3
Specifications of error	7	4
Bond on appeal (omitted in printing)	9	
Summons	11	5
Complaint	12	6
Affidavit of attachment	16	10
Undertaking for attachment	17	10
Sheriff's notice of levy (omitted in printing)	19	
Warrant of attachment (omitted in printing)	20	
Admission of service of warrant of attachment	22	12
Affidavit of publication	23	13
Notice of trial	25	14
Note of issue	26	14
Notice of motion for stay of proceedings	27	15
Affidavit of John A. Jorgenson	28	16
Answer	30	17
First amended answer	33	19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 27, 1933

	Original	Print
Memorandum decision denying motion for stay of proceedings	37	21
Memorandum decision, Buttz, J.	40	24
Notice of entry of judgment and retaxation of costs	44	27
Statement of costs and disbursements	46	28
Findings of fact and conclusions of law	47	29
Judgment and decree	56	37
Special execution	61	41
Judgment and decree...(copy) (omitted in printing)	63	
Notice of sale on special execution	68	43
Affidavit of publication	70	44
Sheriff's report of sale and return of special execution	72	44
Stipulation and order extending time	75	47
Notice of motion for order confirming sale	77	48
Order confirming sale	78	49
Exhibit 1—Promissory note, November 1, 1930	80	50
Exhibit 2—Warranty deed, June 12, 1931 (omitted in printing)	81	
Exhibit 3—Sheriff's notice of levy (omitted in printing)	84	
Warrant of attachment.....(omitted in printing)	85	
Exhibit "A"—Motion to dismiss	87	51
Exhibit "B"—Order of adjudication and reference in matter of Grace L. Connell, bankrupt, district court of the United States	89	52
Statement of evidence	93	54
Caption	95	54
Exhibit "A"—Motion to dismiss	95	55
Exhibit 1—Promissory note, November 1, 1930	97	56
Exhibit 2—Warranty deed, June 12, 1931	97	57
Exhibit 3—Sheriff's notice of levy	100	60
Warrant of attachment	101	61
Testimony of Charles W. Morris	102	62
Testimony of F. R. Stevens	111	70
Motion to dismiss	116	75
Colloquy	117	76
Stenographer's certificate...(omitted in printing)	119	
Proceedings in supreme court of North Dakota	120	78
Opinion, Nuessle, J.	120	78
Judgment	130	87
Docket entries	131	88
Order granting application for stay of remittitur	132	89
Præcipe for transcript of record	133	89
Clerk's certificate.....(omitted in printing)	136	
Stipulation as to printing record	137	90
Order allowing certiorari		93

[fol. 1] Clerk's certificate to transcript omitted in printing.

[fol. 2] **IN SUPREME COURT OF NORTH DAKOTA**

EVA S. WALKER, Plaintiff and Respondent,

vs.

GRACE CONNELL, MYRLE C. ADAMS, and MARY ADAMS, Defendants and Appellants

SUPPLEMENTAL AND AMENDED ORDER SETTLING THE STATEMENT OF CASE AND IDENTIFYING EXHIBITS—Filed Nov. 14, 1932

Upon motion of John A. Jorgenson and W. M. Anderson, attorneys for the defendants and appellants and upon the written stipulation of the attorneys for the parties herein, the court being duly advised in the premises

Now therefore, it is hereby ordered that the hereto attached further stipulation of the attorneys for the parties herein dated November 1st, 1932, be and the same is to be made a part of the settled statement of the case herein and that the supreme court may consider the same as if a trial de novo had been demanded in the settled statement of the case as originally made and to all intents and purposes upon said stipulation the court is to treat the said settled statement as if the demand for a trial de novo had originally been made and it had been so certified in the original settled statement of the case.

Dated this 13th day of November, 1932.

By the Court:

C. W. Buttz, Judge.

[File endorsement omitted.]

[fol. 3] STIPULATION

It is hereby stipulated that in connection with the above and foregoing that Exhibit "B" was so marked as an exhibit and was certified by the trial Judge as one of the

Exhibits, and that it also appears in the judgment roll in this action.

It is further stipulated that the Supreme Court may consider this case the same as if a trial de novo had been demanded in the settled statement of the case.

Dated this 1st day of Nov. A. D. 1932.

F. R. Stevens and Traynor & Traynor, Attorneys for Plaintiff and Respondent. John A. Jorgenson and W. M. Anderson, Attorneys for Defendants and Appellants.

[File endorsement omitted.]

[fol. 4] In District Court of Ramsey County

[Title omitted]

Notice of Appeal to Supreme Court—Filed Oct. 10, 1932

To the above named plaintiff and to her attorneys, Traynor & Traynor, and F. R. Stevens, Devils Lake, N. D.:

Take notice that the above named defendants do hereby appeal to the Supreme Court of the State of North Dakota from that certain judgment which was rendered and docketed in said action in the above entitled court on the 25th day of June, 1932, which judgment awarded the plaintiff $3,928.45 debt and damages and that the deed dated June 12th, 1932, given by Grace Lewis Connell and husband to Myrle C. Adams and Mary Adams which transferred and the N. W. ¼, N. ½ of N. E. ¼, N. E. ¼ of S. E. ¼, S. ½ of N. E. ¼, Sec. 15, N. E. ¼ of Sec. 22, Twp. 152, Range 62, be set aside on the ground it was given fraudulently with the intent — delay and hinder creditors and that no consideration had been paid therefor and the said deed was received and given with knowledge of the fraudulent intent and to assist said Grace Lewis Connell in such fraud, and that the court sustained the atachment made therein and declared the lien of attachment prior to said transfer and declared it prior thereto as a lien on said lands, and rendered a judgment for costs in the sum of $49.60 in addition thereto, and that the appeal is taken from the said judgment and the whole thereof, and the said

defendants demand a retrial of the entire case anew and a trial de novo of said action in the supreme court.

Dated this 23d day of Sept. 1932.

[fol. 5] John A. Jorgenson, Los Angeles, Cal., and W. M. Anderson, Devils Lake, N. D., Attorneys for the Defendants and Appellants.

Due service of the within notice of appeal together with undertaking and specifications of error is hereby admitted by delivery of true and correct copies this 23d day of Sept., 1932.

F. R. Stevens and Traynor & Traynor, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 6] IN SUPREME COURT OF NORTH DAKOTA

[Title omitted]

STIPULATION SETTLING STATEMENT OF CASE AND IDENTIFYING EXHIBITS—Filed Oct. 10, 1932

It is stipulated and agreed by and between the parties to this action that the hereto attached transcript consisting of 38 typewritten pages, one page of index and one page of certificate of Gladys Tompkins, official Court Reporter, is a correct transcript of the evidence and of all proceedings had and matter of record by the official stenographer in the above entitled action and that the hereto attached exhibits, to-wit the exhibits listed in the index A & B & 1-2-3 to the hereto attached transcript, are the exhibits offered and received in evidence upon the trial of said cause, and that the said transcript may be certified to by the court as a correct transcript of the evidence and of all proceedings had and made matter of record by the official stenographer in this action and that the court may identify said exhibits as exhibits offered and received in evidence on the trial of said cause and that the same constitute and may be settled by the court as a settled statement of the

case for use upon appeal to the supreme court, from the judgment herein.

Dated this 23d day of Sept., 1932.

F. R. Stevens & Traynor & Traynor, Attorneys for the Plaintiff. John A. Jorgenson, W. M. Anderson, Attorneys for the Defendants.

[File endorsement omitted.]

[fol. 7] IN SUPREME COURT OF NORTH DAKOTA

[Title omitted]

SPECIFICATIONS OF ERROR—Filed Oct. 10, 1932

Trial De Novo Demanded

The defendants and appellants, while not required to do so, for the convenience of the court submit the following as specifications of error.

The Court erred:

1. In refusing to dissolve the attachment made December 1st, 1931, against defendants, it appearing that Grace Connell, defendant, was adjudicated a bankrupt in the U. S. Court at Los Angeles, February 24th, 1932, a period of less than four months after the attachment, the trial court having found that she was at the time of the attachment insolvent. That no cause or ground of attachment is alleged in the complaint or affidavit as to the defendants Adams as no showing is made that plaintiff has a cause of action against them for money only as is required by statute. The plaintiff not having a lien upon real estate cannot attack the transfer as fraudulent. Also in refusing to grant defendants' motion to dismiss at opening and closing.

2. In refusing to grant a continuance on a showing that the defendant Grace Connell had been adjudicated a bankrupt on the 24th day of February, 1932, and a receiver appointed, and continuing with the trial of said action and rendering a judgment in favor of the plaintiff and against the defendants and disregarded the rights of the U. S.

District Court of Los Angeles, California which had jurisdiction of said action and the property involved, and also the rights of the receiver who had been appointed to administer the estate.

3. In finding that the evidence shows there was no consideration for the transfer, that it was made and delivered and accepted with fraudulent intent both on the part of [fol. 8] the grantor and grantees of the deed in question, when there is no testimony on that point at all in the transcript, showing what the consideration was, or the fact that Myrle C. Adams accepted it with fraudulent intent, and there is no evidence whatsoever as to inability to pay for the same a reasonable amount and there is none whatsoever as to the other joint owner Mary Adams.

Respectfully, (Signed) W. M. Anderson, John A. Jorgenson and W. M. Anderson, Attorneys for Defendants and Appellants.

[File endorsement omitted.]

[fols. 9 & 10] Bond on appeal for $250.00 approved and filed Oct. 10, 1932, omitted in printing.

[fol. 11] In District Court of Ramsey County

[Title omitted]

Summons—Filed Dec. 1, 1931

The State of North Dakota to the above named defendants:

You and each of you are hereby summoned to answer the complaint in this action, which will be filed with the clerk of the above named court at his office in the city of Devils Lake, Ramsey County, North Dakota, and to serve a copy of your answer upon the subscribers at their office in the Mann Building, Devils Lake, Ramsey County, North Dakota, within thirty days after the service of this summons upon you, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken

against you by default for the relief demanded in the complaint.

Dated this 1st day of December, A. D. 1931.

Traynor & Traynor, Attorneys for Plaintiff. Residence and postoffice address: Devils Lake, Ramsey County, North Dakota.

[File endorsement omitted.]

[fol. 12] IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT

EVA S. WALKER, Plaintiff,

vs.

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS, Defendants

COMPLAINT—Filed Dec. 1, 1931

Plaintiff alleges: For a First Cause of Action—

I

That heretofore and on or about November 1st, 1930, the defendant Grace Lewis Connell made, executed and delivered to plaintiff her, the said defendant Grace Lewis Connell's, certain promissory note in writing, dated on said day, wherein and whereby, for value received, she promised and agreed to pay to the plaintiff one year after date the sum of $3,500.00, with interest thereon from the date thereof at the rate of 7% per annum.

II.

That plaintiff is still the owner and holder of said note and no part of said principal or interest has been paid, and the full amount thereof is now due and owing from defendant Grace Lewis Connell to the plaintiff.

III

That the defendant Grace Lewis Connell is also known as Grace Connell, and was formerly Grace Stanton, and also formerly Grace Stanton Lewis.

For a Second Cause of Action, plaintiff alleges:

I

Re-alleges paragraph III of the first cause of action herein the same as if re-alleged herein verbatim.

II

That on October 9th, 1920, the defendant Grace Lewis Connell, then known as Grace Stanton Lewis, became the owner of that certain real estate and premises in Ramsey [fol. 13] County, North Dakota, described as follows, to-wit: Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One Hundred fifty-two (152), North of Range Sixty-two (62) West, in Ramsey County, North Dakota.

That she became the owner thereof under and by virtue of the final decree of distribution made and entered in the matter of the estate of her deceased husband, William Stanton, which final decree of distribution was filed in the office of the probate court of Ramsey County, North Dakota, on October 9th, 1920, and certified copy thereof duly filed for record in the office of the register of deeds of Ramsey County, North Dakota, on October 9th, 1920, and recorded therein in Book L of Misc., on page 365.

III

That the said defendant, Grace Lewis Connell, for many years continued to be the owner of said premises and all of the same and was the owner thereof at the time the indebtedness referred to in the first cause of action herein was incurred. That such indebtedness represents money loaned to said defendant, Grace Lewis Connell, for the purpose of paying off mortgages on said land above described and which money was used for such purpose.

IV

That on or about June 12th, 1931, the above named defendants, Grace Lewis Connell, Merle C. Adams and Mary Adams, his wife, with intent to cheat or defraud the creditors of the said defendant, Grace Lewis Connell, and to

hinder and delay them in the collection of their debts, fraudulently made, executed and placed upon record, or attempted to place upon record, in the office of the register of deeds of Ramsey County, North Dakota, a certain warranty deed for the stated consideration of $10.00, covering the premises above described, and all of the same, in which deed Grace Connell, formerly Grace Stanton, being one of the defendants above named, and Edward E. Connell, her [fol. 14] husband, appeared as grantors, and the defendants Merle C. Adams and Mary Adams, his wife, appeared as grantees.

V

That said deed did not contain the post office address of the grantees and, therefore, was not entitled to record in said office of the register of deeds, but that a purported record thereof was made by such register of deeds on the 10th day of July, 1931, at 10:40 o'clock A. M., in Book 40 of Deeds, on page 448.

VI

That said deed was so executed and made and delivered without any consideration whatsoever and was executed fraudulently and solely with the intent to defraud, hinder and delay the creditors of the said defendant, Grace Lewis Connell, and that the said defendants, Merle C. Adams, and Mary Adams, his wife, did not pay any consideration therefor, but accepted and received the said deed with the knowledge of the fraudulent intent on the part of the defendant Grace Lewis Connell to so defraud her creditors, and with the intent on their part to assist the said defendant Grace Lewis Connell in such fraudulent purpose.

VII

That the said defendant Grace Lewis Connell has no other land or property within this state, as the plaintiff is informed and believes, out of which the plaintiff can realize on her claim herein, and has no land or property in any other state, and that such transfer of said real estate has rendered the said defendant Grace Lewis Connell wholly insolvent.

VIII

That the said plaintiff is still the owner and holder of said note above described and there is due thereon the amount as claimed in paragraph 1 of the first cause of action herein.

IX

That the defendant Merle C. Adams is the son of the defendant Grace Lewis Connell, and the defendant Mary Adams is the daughter-in-law of the defendant Grace Lewis Connell.

[fol. 15] Wherefore, plaintiff demands judgment as follows, to-wit:

1. Against the defendant Grace Lewis Connell for the sum of $3500.00, with interest thereon at the rate of 7% per annum from and since November 1st, 1930, together with the costs and disbursements herein.

2. Against all of the defendants herein that the deed above referred to and covering the land and premises herein described be declared to be fraudulent as to this plaintiff and that the same be set aside and declared null and void and that this plaintiff have a first and prior lien to said premises and all of the same by virtue of any attachment issued herein and from the date of such attachment.

3. That it be decreed that the said deed is not entitled to record and that the same be cancelled of record and stricken from the record and that the register of deeds of Ramsey County, North Dakota, be ordered and directed to so cancel and strike the same from the record.

4. That plaintiff have such other and further relief as to this court may seem just, reasonable and equitable.

Dated this 1st day of December, A. D. 1931.

Traynor & Traynor, Attorneys for Plaintiff, Devils Lake, North Dakota.

[File endorsement omitted.]

Duly sworn to by Mack V. Traynor. Jurat omitted in printing.

[fol. 16] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted.]

AFFIDAVIT FOR ATTACHMENT—Filed Dec. 1, 1931

STATE OF NORTH DAKOTA,
County of Ramsey, ss.

Mack V. Traynor, being first duly sworn, on oath deposes and says that he is one of the attorneys for plaintiff in the above entitled action.

That a cause of action exists against the said Defendants and in favor of said Plaintiff therein as shown by the verified complaint in this action which was filed in the office of the Clerk of said Court on the 1st day of December, 1931, showing a cause of action on contract, being a promissory note in the sum of $3500.00, dated November 1st, 1930, due one year after date, with interest at 7% per annum, and made, executed and delivered by the defendant Grace Lewis Connell,

And that the Defendants and none of them are residents of this State.

And prays that a Writ of Attachment may be allowed and issued against the property of said Defendants therein, according to the statute in such case provided.

Mack V. Traynor.

[File endorsement omitted.]

Subscribed and sworn to before me, on this 1st day of December, 1931. M. E. Dailey, Notary Public, North Dakota. (Seal.) My Commission expires August 1st, 1934.

[fol. 17] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

UNDERTAKING FOR ATTACHMENT—Filed Dec. 1, 1931

Whereas Eva S. Walker, the plaintiff above named has commenced an action by summons for the recovery of money against Grace Lewis Connell, Merle C. Adams and Mary

Adams, said Defendants and has made or is about to make application for a writ of attachment against the property of said Defendants in pursuance of the statute in such case made and provided.

Now, therefore, We Eva S. Walker, and Northern and Dakota Trust Company, a Corporation, Fargo, N. D., do undertake, promise and agree to and with said Defendants that the said Plaintiff shall and will, pay all costs that may be awarded to said Defendants and all damages they may sustain by reason of said attachment, not exceeding the sum of Four Thousand ($4000.00) Dollars, in case the said Defendants recover judgment in said action, or the said attachment be set aside by order of the Court.

Dated this 28th day of November, A. D. 1931.

Eva S. Walker, by Traynor & Traynor, Her Attorneys of record. By Mack V. Traynor Northern and Dakota Trust Company, Surety. (Corporate Seal.) By M. C. Bacheller, Attorney in Fact.

Signed and Delivered in Presence of —— ——.

I hereby approve the within undertaking and the surety thereon this 1st day of December 1931.

Herman Stenseth, Clerk of District Court, Ramsey County, N. Dak. H. E. Stenseth, Deputy.

[fol. 18] State of North Dakota,
County of Ramsey, ss:

On this 28th day of November, A. D. 1931, before me the undersigned notary public in and for said county and state personally appeared Mack V. Traynor, known to me to be a member of the firm of Traynor & Traynor, attorneys of record for plaintiff herein, and he acknowledged to me that he executed the within instrument by Traynor & Traynor, his attorneys of record by himself as a member of said firm.

M. E. Daeley, Notary Public, Ramsey County, North Dakota. (Seal.) My commission expires October 2nd, 1932.

State of North Dakota,
County of Grand Forks, ss:

On this 30th day of November A. D. 1931, before me, the undersigned, a Notary Public in and for said State and

County, personally appeared M. C. Bacheller known to me to be the person who is described in and whose name is subscribed to the within instrument as Attorney-In-Fact of Northern and Dakota Trust Company, of Fargo, North Dakota, the Surety, and acknowledge to me that he subscribed the name of Northern and Dakota Trust Company thereto as principal and his own name as Attorney-In-Fact.

Jno. T. Neville, Notary Public, Grand Forks County, North Dakota. (Seal.) My commission expires May 13, 1937.

[File endorsement omitted.]

[fols. 19 & 20] Sheriff's notice of levy, filed Dec. 1, 1931, omitted by stipulation because appearing herein as part of respondent's Exhibit 3.

[fol. 21] Warrant of attachment omitted by stipulation because appearing herein as part of respondent's exhibit No. 3.

Filed and issued in District Court, Ramsey Co., N. Dak. Dec. 1, 1931. Returned and filed July 15, 1932.

Herman Stenseth.

[fol. 22] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

ADMISSION OF SERVICE—Filed July 15, 1932

Due and personal service of the attached warrant of attachment and sheriff's notice of levy is hereby admitted by delivery of true and correct copy thereof within the County of Ramsey and State of North Dakota, this 14th day of December, A. D. 1931. The undersigned further states that he is the occupant of said premises described in said notice of levy.

C. W. Oliver.

[File endorsement omitted.]

[fol. 23] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

AFFIDAVIT OF PUBLICATION—Filed Dec. 1, 1931

STATE OF NORTH DAKOTA,
County of Ramsey, ss:

Mack V. Traynor, being first duly sworn on oath, deposes and says that he is a member of the firm of Traynor & Traynor, attorneys of record for the plaintiff in the above entitled action; that a verified complaint in said action has been filed with the clerk of the district court of Ramsey County, North Dakota, the County in which said action is commenced, setting forth a cause of action in favor of the plaintiff and against the defendants and each and all of them; that the place of residence of each and all of said defendants is the city of Los Angeles, California; that none of said defendants are residents of this state; that the defendant Grace Lewis Connell has property within this state; that in so far as the defendants Merle C. Adams and Mary Adams are concerned said action consists wholly or partly in excluding them from any interest in or lien upon specific real property within this state or in enforcing, regulating, defining or limiting such interest or lien in favor of the plaintiff, or otherwise affecting the title to such property. That such real estate is described as follows:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred Fifty-two (152), North of Range Sixty-two (62) West.

[fol. 24] That the defendants Merle C. Adams and Mary Adams have property within this state, or claim to have property within this state.

That this affidavit is made for the purpose of obtaining service upon each and all of said defendants by publication in the manner provided by law.

Mack V. Traynor.

Subscribed and sworn to before me this 1st day of December, A. D. 1931. Florence Sanders, Notary Public, Ramsey County, N. D. (Seal.) My commission expires Oct. 2nd, 1932.

[File endorsement omitted.]

[fol. 25] In District Court of Ramsey County

[Title omitted]

Notice of Trial—Filed Feb. 23, 1932

Please take notice that the above entitled action will be brought to trial at regular term of the District Court appointed to be held in and for the County of Ramsey, at the Court House in Devils Lake, N. D., on the 7th day of March, One Thousand Nine Hundred and thirty-two at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Yours respectfully, Traynor & Traynor, Attorneys for Plaintiff.

To W. M. Anderson, Devils Lake, N. D., and John A. Jorgenson, Los Angeles, Calif., Attorneys for Defendants:

Personal service of the within Notice of Trial by delivery of copy thereof hereby admitted at Los Angeles, Calif., this 11th day of February 1932.

John A. Jorgenson, Attorney for Defendants.

[File endorsement omitted.]

[fol. 26] District Court, Second Judicial District, County of Ramsey, State of North Dakota. Eva S. Walker, plaintiff, vs. Grace Lewis Connell, Merle C. Adams and Mary Adams, defendants. Note of issue. Issue of law and fact. Last pleading served December 28th, 1931. Traynor & Traynor, attorneys for plaintiff; John A. Jorgenson, Los

Angeles, Calif., attorney for defendants; W. M. Anderson, Devil's Lake, of counsel. Will the Clerk please file this note of issue, and enter the cause on the calendar for the regular March, A. D. 1932 Term of this Court. Yours truly, Traynor & Traynor, attorneys for plaintiff. Filed in District Court, Ramsey Co., N. Dak., Feb. 23, 1932.

[fol. 27] In District Court of Ramsey County

[Title omitted]

Notice of Motion for Stay of Proceedings—Filed Mar. 7, 1932

Notice is hereby given that on the 7th day of March, 1932, at the court rooms of the District Court in the City of Devils Lake, North Dakota, at the opening of court on said day, at 10 a. m., or as soon thereafter as counsel can be heard, the defendants will move that all proceedings in the above entitled matter be stayed until the disposition of bankruptcy proceedings taken in the United States District Court, Southern District of California, Central Division, at Los Angeles, California, as set forth in the affidavit of John A. Jorgenson and in the answer of defendant Grace Lewis Connell.

Said motion will be based upon the attached affidavit of John A. Jorgenson and the amended answer of defendant Grace Lewis Connell, served herewith, and there will be presented at the time of hearing said motion an authenticated copy of the adjudication in bankruptcy.

Notice is also given that the defendants will move at the same time and place to be allowed to file the first amended answer served herewith.

John A. Jorgenson, Attorney for Defendants. W. M. Anderson, Devils Lake, N. Dak., of Counsel.

[File endorsement omitted.]

[fol. 28] IN DISTRICT COURT OF RAMSEY COUNT

[Title omitted]

AFFIDAVIT OF JOHN A. JORGENSON—Filed March 7, 1932

STATE OF CALIFORNIA,
County of Los Angeles, ss:

John A. Jorgenson, being first duly sworn, deposes and says: That he is one of the attorneys for defendants herein.

That on the 24th day of February, 1931, at Los Angeles, California, the defendant Grace Lewis Connell filed in the District Court of the United States for the Southern District of California, Central Division, her petition alleging that she was by occupation a housewife, and had resided and had her domicile and principal place of business for the greater portion of six months next immediately preceding the filing of said petition, at Los Angeles, California, within said judicial district; that she owed debts which she was unable to pay in full; that she was willing to surrender all her property for the benefit of her creditors except such as was exempt by law and desired to obtain the benefit of the Act of Congress relating to bankruptcy. She accompanied said petition with a schedule marked "A," and verified by her oath, containing a full and true statement of all debts and (so far as it was possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as were required by the provisions of said Act; that she also accompanied said petition with a schedule marked "B" and verified by her oath, containing an accurate inventory of all her property, both real and personal, and such further statements concerning said property as were required by the provisions of said [fol. 29] Act; and she prayed in said petition that she be adjudged by the court bankrupt within the purview of said Act.

That said defendant Grace Lewis Connell has been for several years, and now is, a resident, and has had her domicile and principal place of business, and now has the same in the City of Los Angeles in the Southern District of California, Central Division, of the United States District Court; that in said schedules the claim of plaintiff herein is set forth as one of her debts, and there is listed her equity

and interest in all the real estate described in the complaint herein.

That on the 24th day of February, 1932, in said proceedings the defendant Grace Lewis Connell was adjudged a bankrupt by the United States District Court of the Southern District of California, Central Division.

That the attachment in this action was levied on or about December 1, 1931, and therefore within four months of the filing of said petition in bankruptcy.

John A. Jorgenson.

Subscribed and sworn to before me this 25th day of February, 1932. Jessie L. Miner, Notary Public in and for the County of Los Angeles, State of California. My commission expires Jan. 25, 1936. (Seal.)

[File endorsement omitted.]

Received copy of the within Notice of Motion and Affidavit this 29 day of Feb. 1932.

Traynor & Traynor, Attys. for Ptf.

[fol. 30] In District Court of Ramsey County

[Title omitted]

Answer—Filed March 7, 1932

Now comes the defendants and for their answer to plaintiff's first cause of action herein:

I

Admit the allegations contained in paragraph I, II, and III thereof.

For their answer to plaintiff's second cause of action herein, defendants:

I

Admit paragraph I.

II

Admit paragraph II.

III

Admit paragraph III.

IV

Admit the allegations of paragraph IV, except these defendants deny that said transaction was made with any intent to cheat or defraud any creditor of defendant Grace Lewis Connell, or to hinder or delay any creditor in the collection of any debt, and deny that said transaction was conducted fraudulently; allege that said transaction was made in good faith, and said conveyance, or attempted conveyance, was made for value.

V

Admit the allegations of paragraph V, except these de-
[fol. 31] fendants deny that said deed was not entitled to record in the office of the register of deeds.

VI

Deny the allegations of paragraph VI and every part thereof.

VII

Admit that the defendant Grace Lewis Connell has no other land or property within the State of North Dakota out of which the plaintiff can realize on her claim, and admits that said Grace Lewis Connell has no other land or property in any other state, but denies that such transfer has rendered the defendant Grace Lewis Connell insolvent.

VIII

Admits paragraph VIII.

IX

Admits paragraph IX.

Wherefore these defendants pray that plaintiff's second cause of action be dismissed and that they have and recover their costs and disbursements herein.

John A. Jorgenson, 1321 Detwiler Building, Los Angeles, California. Attorney for Defendants. William Anderson, Devils Lake, No. Dakota, of Counsel.

[File endorsement omitted.]

[fol. 32] *Duly sworn to by Grace L. Connell. Jurat omitted in printing.*

[fol. 33] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

FIRST AMENDED ANSWER—Filed March 7, 1932

Now come the defendants and for their first amended answer to plaintiff's first cause of action herein:

I

Admit the allegations contained in paragraphs I, II and III thereof.

For their answer to plaintiff's second cause of action herein, defendants:

I

Admit paragraph I.

II

Admit paragraph II.

III

Admit paragraph III.

IV

Admit the allegations of paragraph IV, except these defendants deny that said transaction was made with any intent to cheat or defraud any creditor of defendant Grace Lewis Connell, or to hinder or delay any creditor in the collection of any debt, and deny that said transaction was conducted fraudulently; allege that said transaction was made in good faith, and said conveyance, or attempted conveyance, was made for value.

V

Admit the allegations of paragraph V, except these de-
[fol. 34] fendants deny that said deed was not entitled to record in the office of the register of deeds.

VI

Deny the allegations of paragraph VI and every part thereof.

VII

Admit that the defendant Grace Lewis Connell has no other land or property within the State of North Dakota out of which the plaintiff can realize on her claim, and admits that said Grace Lewis Connell has no other land or property in any other state, but denies that such transfer has rendered the defendant Grace Lewis Connell insolvent;

VIII

Admits paragraph VIII.

IX

Admits paragraph IX.

For a separate and further defense to both causes of action herein the defendants:

I

Allege that on the 24th day of February, 1931, at Los Angeles, California, the defendant Grace Lewis Connell filed in the District Court of the United States for the Southern District of California, Central Division, her petition alleging that she was by occupation a housewife, and had resided and had her domicile and principal place of business for the greater portion of six months next immediately preceding the filing of said petition, at Los Angeles, California, within said judicial district; that she owed debts which she was unable to pay in full; that she was willing to surrender all her property for the benefit of her creditors except such as was exempt by law, and desired to obtain the benefit of the Act of Congress relating to bankruptcy. She accompanied said petition with a schedule marked "A", and verified by her oath, containing a full and true statement of all debts and (so far as it was possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as [fol. 35] were required by the provisions of said Act; that she also accompanied said petition by a schedule marked "B" and verified by her oath, containing an accurate inventory of all her property, both real and personal, and such further statements concerning said property as were required by the provisions of said Act; and she prayed in said petition that she be adjudged by the court, bankrupt within the purview of said Act.

II

That said defendant Grace Lewis Connell has been for several years, and now is a resident, and has had her domicile and principal place of business, and now has the same in the City of Los Angeles in the Southern District of California, Central Division, of the United States District Court; that in said schedules the claim of plaintiff herein is set forth as one of her debts, and there is listed her equity and interest in all the real estate described in the complaint herein.

III

That on the 24th day of February, 1932, in said proceedings the defendant Grace Lewis Connell was adjudged a bankrupt by the United States District Court of the Southern District of California, Central Division.

IV

That the attachment in this action was levied on or about December 1, 1931, and therefore within four months of the filing of said petition in bankruptcy.

Wherefore, defendants pray that this action be either dismissed or that all proceedings herein be stayed until the final disposition of said bankruptcy proceedings.

John A. Jorgenson, Attorney for Defendants. W. M. Anderson, of Counsel.

[fol. 36] *Duly sworn to by Grace L. Connell. Jurat omitted in printing.*

Received copy of the within first amended answer this 29th of Feb., 1932.

Traynor & Traynor, Attys. for Ptf.

[File endorsement omitted.]

[fol. 37] In District Court of Ramsey County

[Title omitted]

Memorandum Decision Denying Motion for Stay of Proceedings—Filed April 5, 1932

In this case the plaintiff sues in this state the defendant Connell, who is a resident of California, and obtains juris-

diction by the attachment of certain lands located in North Dakota which she claims is the property of the defendant Connell. If successful, she would be entitled to no personal judgment against the defendant, but simply to have certain real estate, which is situated in this state and which has been transferred to the other defendants voluntarily and to defeat her creditors, as is claimed by the plaintiff, sold to satisfy the indebtedness sued upon.

Since the beginning of the action the defendant Connell has filed a petition in bankruptcy in a California Bankruptcy Court and now asks that all proceedings in this court be stayed under a provision of the Federal Bankruptcy Law which provides that a suit founded upon a claim upon which a discharge in bankruptcy will be a release may be stayed until after the adjudication or dismissal of the petition, and in proper cases until after the disposition of the bankruptcy proceeding. As a general proposition this position is sound and such proceeding in the Federal Bankruptcy Court, when brought to the attention of the trial court, must be arrested and the cause stayed.

Hamilton v. First State Bank of Garrison, 57 N. D. 143.

However, another principle and rule intervenes in cases of this class which this defendant overlooks, and that is this: Where no attempt is being made to enforce a personal judgment against the bankrupt, the bankrupt is not interested for the reason that he or she is not and cannot be injured by the proceeding. In the instant case no per-
[fol. 38] sonal judgment is sought.

No claim is made that the property attached is a homestead interest; indeed, it is the position of the defendant Connell that this property does not belong to her at all, but that it has been legitimately transferred to the other defendants. In any event, she is not in a position to complain. If the property has been legitimately transferred to the other defendants, then they, and they only, will be annoyed or injured by the attachment proceeding; if it has been wrongfully transferred to defeat creditors, this defendant is in any event no longer interested in the land because by her act in filing the petition in the Bankruptcy Court she has turned the property over to that tribunal for the benefit of her estate, and all her right, title and interest

therein have been relinquished for that purpose. Taking either horn of the dilemma, she no longer has any interest whatever in this real estate.

Her position of non-interest is a sufficient answer to her motion. However, it has been held that

"A pending suit in a state court against a bankrupt to set aside a conveyance of property is not within Bankruptcy Act Sec. 11 par a, and the court of bankruptcy has no power to stay such suit."

In re United Wireless Tel. Co., 192 Fed. 238, 27 Am. Bankr. 1.

If it may be urged that liens obtained within four months prior to the adjudication in bankruptcy are discharged, the answer in this case is that the bankrupt is not in position to claim that the same are discharged—as already suggested above.

"Such liens are avoided only as against the trustee in bankruptcy and those claiming under him, and not as against all the world, or as against the bankrupt himself."

7 C. J. 197.

See also:

Miller v. Barto, (Ill.) 93 N. E. 140;
Rochester Lumber Co. v. Locke (N. H.) 54 A. 705,

in which it is held that liens of judgment or attachments within the four months period are not avoided at the in- [fol. 39] stance of a bankrupt who, by voluntary bankruptcy proceedings, has divested himself of his rights in non-homestead property.

The application to stay proceedings is hereby denied and the case continued upon the March, 1932, trial calendar of this court.

By the Court:

C. W. Buttz, Judge.

Dated April 2, 1932.

[File endorsement omitted.]

[fol. 40] In District Court of Ramsey County

[Title omitted]

Memorandum Decision—Filed June 22, 1932

This case is somewhat interesting from the fact that it shows what people will do and to what extremes they will go when they become involved financially, even when their action affects their best friends. In this case one J. H. Smith, one time "grand old man of Crary" in this state—merchant, farmer, banker, philanthropist, old timer, and splendid character, now retired and living in California, loaned to the defendant Grace Lewis Connell, close family friend, the money with which to pay off encumbrances to prevent the loss of her land, the land in question and under attachment in this lawsuit. Later Mr. Smith transferred the indebtedness in question to his daughter, the plaintiff in this action. In the course of time the Smith-Walker family found themselves in financial difficulties and asked repayment of their loan. At that time the land attached in this action was still in Mrs. Connell's name and owned by her. Through some excuse payment was delayed and very soon thereafter the land in question, all of the property owned by Mrs. Connell, was transferred to her son, the defendant Adams, and his wife. All of the parties live in California.

Assuming the transfer to Adams to have been fraudulent and the property put out of Mrs. Connell's name to get it out of reach of her creditors, this action was begun in North Dakota and the land in question attached, the grounds for attachment, among others, being the non-residence of the defendant Connell and the fraudulent transfer. Later Mrs. Connell filed a voluntary petition in bankruptcy in the Federal Courts of California and when this case was reached for trial at the March, 1932, term of this court, there was a motion by Mrs. Connell to continue [fol. 41] because her estate was in the Bankruptcy Court. This motion was denied for the reason that no personal judgment was asked against Mrs. Connell, and for the further reason that the action in question affected only the land in question, in which she was claiming no interest, her position being in the lawsuit that the land did not belong to her but was the property of her son and daughter-in-law.

The trustee in bankruptcy made no appearance whatever, nor did any other person. Later in the term the case came to trial upon the merits, the plaintiff appearing by her attorneys, Hon. F. R. Stevens and Traynor & Traynor, Esqs., while the defendant Connell appeared by her attorney, W. M. Anderson, Esq. Upon the trial of the action there were no other appearances of any kind whatsoever. The plaintiff offered evidence of the debt in question and of her title thereto, of the amount owing thereon, and the same was long past due, that the land in question had been transferred under the circumstances indicated above and without consideration. There is at this time no need of going into the testimony in detail, but it is sufficient to say that a very strong prima facie case was made by the plaintiff, from which the Court must conclude that Mrs. Connell, the girlhood friend of Mrs. Walker and a close friend of Mrs. Walker's family, finding herself in straitened circumstances, deliberately deeded this property to her son and daughter-in-law to defeat Mrs. Walker in the collection of her just claim, indeed conveying away the very property that the Smith-Walker family had furnished her the money to pay for. From the prima facie case made there was a glaring attempt on the part of Mrs. Connell, her son and daughter-in-law, to defeat the most just claim of the plaintiff—an act entirely unconscionable and illegal, followed by a bankruptcy proceeding in California of at least very doubtful merit. In view of the bankruptcy proceedings no personal judgment should be entered against Mrs. Connell, and, in fact, being a non-resident and service being by substitution, there cannot be a personal judgment entered against her, nor can there be a recovery by the plaintiff ex-
[fol. 42] cept as to what she may be able to get out of the land through her lien under the attachment proceedings.

At the trial of this case, although the attorney for Mrs. Connell appeared, no evidence of any kind was offered but Mrs. Connell did participate through her attorney to the extent of restating her objections to the jurisdiction of the Court and renewing her motion for a continuance because of her having filed the California petition in bankruptcy. That motion was again over-ruled or denied and the plaintiff, having made a sound prima facie case, is entitled to judgment in this action. The defendant having advanced no testimony whatever, having failed to intro-

duce any evidence upon the trial to sustain her position, or any evidence to sustain the validity of the transfer in question, there is nothing in the case that overthrows the prima facie case of the plaintiff or which would avoid the plaintiff's right of recovery. As is stated in the case of Peck v. Peck (N. D.) 212 N. W., 872:

"It is assumed opponent is unable successfully to controvert the prima facie case."

Indeed, from the record before this Court, the whole situation indicated is that should Mrs. Connell or the Adam's have been called as witnesses either on their own behalf or by the plaintiff their truthful testimony, if given, would have absolutely made the case for the plaintiff.

It may be noted in passing that the deed from Mrs. Connell to her children was not legally recorded in the office of the Register of Deeds of Ramsey County, North Dakota, for the reason that the same was not entitled to record inasmuch as it did not contain the postoffice address of the grantee and, hence, the attachment would seem valid for another reason, that is, that it was a good faith proceeding on the part of this plaintiff prior to any notice to the attaching creditor, the wrongful recording of the deed in itself being insufficient to give either constructive or actual notice.

[fol. 43] Chapter 249, page 351, Session Laws of 1929;

Donovan v. St. Anthony & Dakota Elevator Co., 8 N. D. 585;

First National Bank v. Casselton Realty and Investment Co., 44 N. D. 553;

Mott v. Holbrook, 28 N. D. 251.

Being in this Court, admitting that she has no other property in this or any other state, following that by the filing of a petition in bankruptcy in California praying that she be adjudged a bankrupt, her only defense to the utilization of this property to the payment of an honest debt, a debt contracted to protect and preserve the same, being her alleged bankruptcy, the transaction on the part of the defendants branded by almost every badge of fraud known to the law, and the whole proceeding utterly preg-

ment with bad faith and fraud, it follows that this Court must and does find that the plaintiff by virtue of her writ of attachment has a first lien upon this property prior to and superior to the rights of any of the defendants and of any rights they may have acquired therein subsequent to the levy of attachment in this case, and that the property in question, attached in this action, be sold by the sheriff of this county to satisfy the amount due to the plaintiff upon her claim, all as provided by the laws of this state. Plaintiff will recover her costs and disbursements, but no personal judgment will be entered against any of the defendants, except that at the option of the plaintiff she may have personal judgment against the defendant Connell for her costs and disbursements only.

By the Court:

C. W. Buttz, Judge.

Dated June 20, 1932.

[File endorsement omitted.]

[fol. 44] In District Court of Ramsey County

[Title omitted]

Notice of Entry of Judgment and Retaxation of Costs—Filed July 1, 1932

To the above named defendants and to their attorneys, John A. Jorgenson, of Los Angeles, California, and W. M. Anderson, of Devils Lake, North Dakota:

Please take notice that judgment was entered in the above entitled action and filed and docketed in the office of the clerk of said court on the 25th day of June, A. D. 1932, in favor of said plaintiff and against said defendants as shown in the attached judgment and decree, and you will further take notice that on the 9th day of July, A. D. 1932, at the hour of ten o'clock in the forenoon of said day, at the office of Hon. Herman Stenseth, clerk of court in Devils Lake, North Dakota, the plaintiff will move for the retaxation of costs in the above entitled action in accordance with the enclosed statement of costs and disbursements.

Dated this 27th day of June, A. D. 1932.

F. R. Stevens and Traynor & Traynor, Attorneys for Plaintiff, Devils Lake, North Dakota.

Admission of Service

Personal service of the Findings and Order for Judgment, Judgment and Decree, statement of costs and disbursements and notice of entry of judgment and retaxation of costs in the above entitled action is hereby admitted by [fol. 45] delivery of true and correct copy thereof to me at Devils Lake, North Dakota, this 27th day of June, A. D. 1932.

W. M. Anderson, John A. Jorgenson, Attorneys for Defendants, by W. M. Anderson, Devils Lake, N. D.

[File endorsement omitted.]

[fol. 46] In District Court of Ramsey County

[Title omitted]

Statement of Costs and Disbursements—Filed June 25, 1932

Statutory costs		$13.00
Witness fees, C. W. Morris	1 day, 1 mile, $2.10	
F. R. Stevens	1 day, 1 mile, 2.10	
Total witness fees		4.20
Trial issue of fact		5.00
Extra defendant served (2)		2.00
Total		24.20

The above statement of costs and disbursements is hereby taxed and allowed in the sum of $24.20 this 25th day of June, A. D. 1932.

Herman Stenseth, Clerk of District Court. (Seal.)

Duly sworn to by Mark V. Traynor. Jurat omitted in printing.

Costs re-taxed and allowed July 9, 1932—$24.20.

Herman Stenseth, Clerk.

[File endorsement omitted.]

[fol. 47] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

Findings of Fact and Conclusions of Law—Filed June 25, 1932

The above entitled action was duly and regularly commenced by issuance of summons and verified complaint and by filing the same in the office of the clerk of court of Ramsey County, North Dakota, on December 1st, 1931, and thereafter affidavit for attachment and undertaking for attachment was filed in said office and a warrant of attachment was duly and regularly issued and delivered to the sheriff of Ramsey County, North Dakota, for service and levy. That thereafter an affidavit for publication was duly made and filed asking for service by publication in the manner provided by law upon all of the defendants herein. That thereafter a copy of the sheriff's notice of levy and of the warrant of attachment was duly and regularly filed for record in the office of the register of deeds of Ramsey County, North Dakota, on December 1st, 1931, and recorded therein in Book R of Misc. on page 51, and notice of lis pendens also filed for record in said office of the register of deeds on December 1st, 1931, and recorded therein in Book R of Misc. on page 50. That the land described in such notice of levy and in such notice of lis pendens are those certain premises in Ramsey County, North Dakota, described as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West.

That due and personal service of the warrant of attachment and sheriff's notice of levy was made upon C. W. Oliver, the occupant of said premises, on the 14th day of December, [fol. 48] 1931, as shown by his admission of service herein. That thereafter all of said defendants appeared herein by their attorneys, John A. Jorgenson of Los Angeles, California, and W. M. Anderson, of Devils Lake, North Dakota,

and served their answer herein, and thereafter served their first amended answer herein. That said action was duly and regularly placed upon the regular March 1932 calendar of the above named court for trial and at the opening of said term the said defendants appeared by their said attorneys and served a notice of motion asking that all proceedings in said action be stayed until the bankruptcy proceedings of the defendant Grace Lewis Connell be determined, and argument having been had thereon and the court having denied such motion, and said matter having come on regularly for trial at 10:00 A. M., on the 14th day of May, A. D. 1932, at Chambers, in the Federal Court Room, in the city of Devils Lake, Ramsey County, North Dakota, before the Honorable C. W. Buttz, Judge, said matter being an action triable to the court without a jury, and at said time and place the plaintiff appearing by her attorneys, F. R. Stevens and Traynor & Traynor of Devils Lake, North Dakota, and the defendants appearing by their attorney, W. M. Anderson of Devils Lake, North Dakota, and evidence and testimony having been produced, and the Court being fully advised in the premises makes the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

I

That due and regular warrant of attachment has been issued herein and levy made on the 1st day of December, 1931, upon the land and premises hereinafter described and upon all the right, title and interest of each and all of the defendants therein, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West.

[fol. 49]

II

That the defendants herein have appeared herein personally and entered such appearance and submitted to the jurisdiction of this court.

III

That heretofore and on or about November 1st, 1930, the defendant Grace Lewis Connell made, executed and delivered to plaintiff her, the said defendant Grace Lewis Connell's, certain promissory note in writing, dated on said day, wherein and whereby, for value received, she promised and agreed to pay to the plaintiff one year after date the sum of $3500.00, with interest thereon from the date thereof at the rate of 7% per annum.

IV

That plaintiff is still the owner and holder of said note and no part of said principal or interest has been paid, and the full amount thereof is now due and owing from defendant Grace Lewis Connell to the plaintiff.

V

That the defendant Merle C. Adams is also known as Myrle C. Adams and that he is the husband of the defendant Mary Adams and has been such at all times herein.

VI

That on October 9th, 1920, the defendant Grace Lewis Connell, then known as Grace Stanton Lewis, became the owner of that certain real estate and premises in Ramsey County, North Dakota, described as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter, (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼), of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152), North of Range Sixty-two (62) West, in Ramsey County, North Dakota.

That she became the owner thereof under and by virtue of the final decree of distribution made and entered in the matter of the estate of her deceased husband, William Stan- [fol. 50] ton, which final decree of distribution was filed in the office of the probate court of Ramsey County, North Dakota, on October 9th, 1920, and certified copy thereof duly filed for record in the office of the register of deeds of Ram-

sey County, North Dakota, on October 9th, 1920, and recorded therein in Book I of Misc., on page 366.

VII

That the said defendant, Grace Lewis Connell, for many years continued to be the owner of said premises and all of the same and was the owner thereof at the time the indebtedness referred to in paragraph III of these Findings was incurred. That such indebtedness represents money loaned to said defendant, Grace Lewis Connell, by J. H. Smith, the father of this plaintiff, and the note representing the same was thereafter sold, endorsed and delivered by the said J. H. Smith to this plaintiff, and the note sued upon herein is a renewal of such indebtedness, and such money was given to the said defendant, Grace Lewis Connell, for the purpose of paying off mortgages on said land above described and which money was used for such purpose.

VIII

That on or about June 12th, 1931, the above named defendants, Grace Lewis Connell, Merle C. Adams and Mary Adams, his wife, with intent to cheat or defraud the creditors of the said defendant, Grace Lewis Connell, and to hinder and delay them in the collection of their debts, fraudulently made, executed and placed upon record, or attempted to place upon record, in the office of the register of deeds of Ramsey County, North Dakota, a certain warranty deed for the stated consideration of $10, covering the premises above described and all of the same, in which deed Grace Lewis Connell, formerly Grace Stanton, being one of the defendants above named, and Edward E. Connell, her husband, appeared as grantors, and the defendants Merle C. Adams and Mary Adams, his wife, appeared as grantees.

IX

That said deed did not contain the postoffice address of the grantees and, therefore, was not entitled to record in [fol. 51] said office of the register of deeds, but that a purported record thereof was made by such register of deeds on the 10th day of July, 1931, at 10:40 o'clock A. M., in Book 40 of Deeds, on page 448. That because of the fact that such deed was not entitled to record the purported

record thereof is absolutely null and void and the attachment herein is prior to such purported record and the lien of such attachment is prior to such deed.

X

That said deed was so executed and made and delivered without any consideration whatsoever and was executed fraudulently and solely with the intent to defraud, hinder and delay the creditors of the said defendant, Grace Lewis Connell, and that the said defendants, Merle C. Adams, and Mary Adams, his wife, did not pay any consideration therefor, but accepted and received the said deed with the knowledge of the fraudulent intent on the part of the defendant Grace Lewis Connell to so defraud her creditors, and with the intent on their part to assist the said defendant, Grace Lewis Connell, in such fraudulent purpose.

XI

That the said defendant, Grace Lewis Connell, has no other land or property within this state out of which the plaintiff can realize on her claim herein, and has no land or property in any other state, and that such transfer of said real estate has rendered the said defendant, Grace Lewis Connell, wholly insolvent.

XII

That the plaintiff is still the owner and holder of said note and there is due thereon to the plaintiff from the defendant Grace Lewis Connell the sum of $3500, with interest at the rate of 7% per annum from and since November 1st, 1930.

XIII

That the defendant Merle C. Adams is the son of the defendant Grace Lewis Connell, and the defendant Mary [fol. 52] Adams is the daughter-in law of the defendant Grace Lewis Connell.

XIV

That no appearance herein whatsoever has been made by or on behalf of any trustee in bankruptcy of the said defendant, Grace Lewis Connell.

XV

That the land transferred herein by the defendant Grace Lewis Connell to her son Myrle C. Adams and his wife Mary Adams for the consideration of $10, which was the only consideration, was then, at the time of such transfer, of the actual value of $5,000.

XVI

That shortly after the note herein became due the plaintiff demanded payment or security from the defendant Grace Lewis Connell and at that time the defendant advised plaintiff that no security should be necessary because she always considered this land as security for this debt anyway. Furthermore, she stated that probably she could borrow money from her husband to pay off this indebtedness and that she would talk to her husband in regard thereto and also with her son, the defendant Merle C. Adams, and would advise the plaintiff of the result of such conversations. That instead of paying off such indebtedness or giving this security or informing the plaintiff what she would do, the said defendant, Grace Lewis Connell, executed and delivered the deed referred to herein and attempted to place the same upon record. This, for the sole purpose of attempting to defraud this plaintiff and to hinder and delay her in the collection of this debt.

XVII

That the plaintiff by virtue of the attachment herein against the land and premises involved herein is in the position of a purchaser in good faith and for a valuable consideration of the property attached, and such lien is prior to all liens, claims, interest or equity of each and all [fol. 53] of the defendants in and to said land and premises.

Wherefore, from the foregoing Findings of Fact the court makes the following Conclusions of Law.

Conclusions of Law

One

That the plaintiff Eva S. Walker have and recover of and from the defendant Grace Lewis Connell judgment herein in the sum of $3,500, with interest thereon at the

rate of 7% per annum from and since November 1st, 1930, to the date of entry of such judgment, together with the costs and disbursements herein to be taxed and allowed by the clerk of this court in the manner provided by law.

Two

That the amount of such judgment be and the same is hereby adjudged as a valid, subsisting and prior lien upon the following described land and premises and upon all of the right, title and interest of each and all of the defendants herein thereto which they now have and which they had at the date of the attachment herein on December 1st, 1932, and which land and premises are situated in the County of Ramsey, and State of North Dakota, described as follows, to-wit:

Northwest Quarter (N. W. ¼), Norh Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West;

That said judgment shall be deemed a general personal judgment against any of said defendants.

Three

That the attempted transfer of said premises from the defendant Grace Lewis Connell to her son Myrle C. Adams, and Mary Adams, his wife, dated June 12th, 1931, was made without a valid consideration and with intent to cheat or defraud the creditors of the said defendant, Grace Lewis Connell, and to hinder and delay them in the collection of their debts, and particularly this plaintiff, and that the said [fol. 54] defendants Merle C. Adams and Mary Adams, his wife, accepted and received said purported deed with the knowledge of the fraudulent intent on the part of the defendant Grace Lewis Connell to so defraud her creditors, and particularly this plaintiff, and with the intent on their part to assist the said defendant, Grace Lewis Connell, in such fraudulent purpose, and that such transfer be and the same is hereby in all things set aside as fraudulent and void.

Four

That the attempted recording thereof on July 10th, 1931, in the office of the register of deeds of Ramsey County, North Dakota, in Book 40 of Deeds, on page 448, was a nullity and void for the reason that said instrument was not entitled to record because it did not contain the post-office address or addresses of the grantees therein and such attempted record was and is of no force and effect and the lien of the plaintiff herein in and to and against said premises is prior to such deed and such attempted recording thereof.

Five

That the said premises, or so much thereof as may be necessary, be sold by the sheriff of Ramsey County, North Dakota, to satisfy the amount due plaintiff by virtue of this judgment, and that the defendants and each and all of them and all persons claiming under them or through them or either or any of them subsequent to the commencement of this action be and they are forever barred and foreclosed of any and all right, claim, lien, interest or equity in and to said premises or any part thereof, save only the right of redemption as provided by law, and that the right, claim, title, interest or encumbrance of said defendants or either or any of them, if any, in and to said premises, is subsequent to and subject to plaintiff's said lien herein.

Six

That the purchaser of said premises upon said sale shall be entitled to a deed therefor upon the expiration of one [fol. 55] year from the date of the sale of said premises, unless the same shall have been redeemed in the meantime in the manner provided by law, and that the plaintiff herein may purchase said premises at the said sale.

Seven

That upon the sale of said premises aforesaid the proceeds shall be applied as follows:

1. To the payment of the costs and expenses of sale.
2. To the payment of the costs and disbursements of this action.

3. To the payment of the debt found to be due with interest.

Let judgment be Entered Accordingly.

By the Court.

Dated this 25 day of June, A. D. 1932.

C. W. Buttz, Judge.

[File endorsement omitted.]

[fol. 56] In District Court of Ramsey County

Eva S. Walker, Plaintiff,

vs.

Grace Lewis Connell; Merle C. Adams; and Mary Adams, Defendants.

Judgment and Decree—Filed June 25, 1932

The above entitled action was duly and regularly commenced by issuance of summons and verified complaint and by filing the same in the office of the clerk of court of Ramsey County, North Dakota, on December 1st, 1931, and thereafter affidavit for attachment and undertaking for attachment was filed in said office and a warrant of attachment was duly and regularly issued and delivered to the sheriff of Ramsey County, North Dakota, for service and levy. That thereafter an affidavit for publication was duly made and filed asking for service by publication in the manner provided by law upon all of the defendants herein. That thereafter a copy of the sheriff's notice of levy and of the warrant of attachment was duly and regularly filed for record in the office of the register of deeds of Ramsey County, North Dakota, on December 1st, 1931, and recorded therein in Book R of Misc. on page 51, and notice of lis pendens also filed for record in said office of the register of deeds on December 1st, 1931, and recorded therein in Book R of Misc. on page 50. That the land described in such notice of levy and in such notice of lis pendens are those certain premises in Ramsey County, North Dakota, described as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast

Quarter (N. E. ¼ S. E.¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West.

That due and personal service of the warrant of attachment and sheriff's notice of levy was made upon C. W. [fol. 57] Oliver, the occupant of said premises, on the 14th day of December, 1931, as shown by his admission of service herein. That thereafter all of said defendants appeared herein by their attorneys, John A. Jorgenson of Los Angeles, California, and W. M. Anderson of Devils Lake, North Dakota, and served their answer herein, and thereafter served their first amended answer herein. That said action was duly and regularly placed upon the regular March, 1932, calendar of the above named court for trial and at the opening of said term the said defendants appeared by their said attorneys and served a notice of motion asking that all proceedings in said action be stayed until the bankruptcy proceedings of the defendant Grace Lewis Connell be determined, and argument having been had thereon and the court having denied such motion, and said matter having come on regularly for trial at 10:00 A. M., on the 14th day of May, A. D. 1932, at Chambers, in the Federal Building, in the city of Devils Lake, Ramsey County, North Dakota, before the Honorable C. W. Butts, Judge, said matter being an action triable to the court without a jury, and at said time and place the plaintiff appearing by her attorneys, F. R. Stevens and Traynor & Traynor of Devils Lake, North Dakota, and the defendants appearing by their attorney, W. M. Anderson of Devils Lake, North Dakota, and evidence and testimony having been produced, and the court being fully advised in the premises and having made Findings of Fact and Conclusions of Law and ordered judgment to be entered in accordance therewith.

Now, therefore, on motion of F. R. Stevens and Traynor & Traynor, Devils Lake, North Dakota, attorneys for plaintiff, and upon all of the files and records in said action, including the Findings of Fact and Conclusions of Law and Order for Judgment made and entered by the court herein, which are filed in this office;

It is adjudged, determined and decreed as follows:

One

That the plaintiff Eva S. Walker have and recover of and from the defendant Grace Lewis Connell judgment herein in the sum of $3,500.00 and interest in the sum of $404.25 and costs in the sum of $24.20, making a total judg-
[fol. 58] ment in favor of said plaintiff in the sum of $3,928.45.

Two

That the amount of such judgment be and the same is hereby adjudged as a valid, subsisting and prior lien upon the hereinafter described land and premises and upon all of the right, title and interest of each and all of the defendants herein thereto which they now have and which they had at the date of the attachment herein on December 1st, 1932, and which land and premises are situated in the County of Ramsey and State of North Dakota, described as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One Hundred fifty-two (152) North of Range Sixty-two (62) West.

That said judgment shall not be deemed a general personal judgment against any of said defendants.

Three

That the attempted transfer of said premises from the defendant Grace Lewis Connell to her son Myrle C. Adams and Mary Adams, his wife, dated June 12th, 1931, was made without a valid consideration and with intent to cheat or defraud the creditors of the said defendant, Grace Lewis Connell, and to hinder and delay them in the collection of their debts, and particularly this plaintiff, and that the said defendants Merle C. Adams and Mary Adams, his wife, accepted and received said purported deed with the knowledge of the fraudulent intent on the part of the defendant Grace Lewis Connell to so defraud her creditors, and particularly this plaintiff, and with the intent on their

part to assist the said defendant, Grace Lewis Connell, in such fraudulent purpose, and that such transfer be and the same is hereby in all things set aside as fraudulent and void.

Four

That the attempted recording thereof on July 10th, 1931, in the office of the register of deeds of Ramsey County, North Dakota, in Book 40 of Deeds, on page 448, was a [fol. 59] nullity and void for the reason that said instrument was not entitled to record because it did not contain the postoffice address or addresses of the grantees therein and such attempted record was and is of no force and effect and the l... of the plaintiff herein in and to and against said premises is prior to such deed and such attempted recording thereof.

Five

That the said premises, or so much thereof as may be necessary, be sold by the sheriff of Ramsey County, North Dakota, to satisfy the amount due plaintiff by virtue of this judgment, and that the defendants and each and all of them and all persons claiming under them or through them or either or any of them subsequent to the commencement of this action be and they are forever barred and foreclosed of any and all right, claim, lien, interest or equity in and to said premises or any part thereof, save only the right of redemption as provided by law, and that the right, claim, title, interest or encumbrance of said defendants or either or any of them, if any, in and to said premises, is subsequent to and subject to plaintiff's said lien herein.

Six

That the purchaser of said premises upon said sale shall be entitled to a deed therefor upon the expiration of one year from the date of the sale of said premises, unless the same shall have been redeemed in the meantime in the manner provided by law, and that the plaintiff herein may purchase said premises at said sale.

Seven

That upon the sale of said premises aforesaid the proceeds shall be applied as follows:

1. To the payment of the costs and expenses of sale.
2. To the payment of the costs and disbursements of this action.
3. To the payment of the debt found to be due with interest.

[fol. 60] Witness the Honorable C. W. Buttz, one of the judges of the District Court in and for the County of Ramsey, Judicial District Number Two, State of North Dakota, and my hand and the seal of this court, in the city of Devils Lake, County of Ramsey and State of North Dakota, this 25th day of June, A. D. 1932.

Herman Stenseth, Clerk of Court. (Seal.)

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 61] In District Court of Ramsey County

[Title omitted]

Special Execution—Filed June 25, 1932

To Thos. B. Regan, Sheriff of Ramsey County, North Dakota, Greetings:

Whereas, on the 25th day of June, A. D. 1932, the plaintiff, Eva S. Walker, recovered judgment in the above entitled action wherein and whereby it was adjudged that there was due to said plaintiff from the defendant Grace Lewis Connell the sum of $3,904.25 principal and interest, and costs in the sum of $24.20, making a total judgment in favor of said plaintiff and against said defendant in the sum of $3,928.45; and

Whereas, there was entered therein judgment for said amount on said day, in which it was established that the plaintiff possessed a certain lien by way of attachment for the said sum of $3,928.45, the amount so adjudged to be due plaintiff as aforesaid, upon the following described real estate and premises situated in the County of Ramsey and State of North Dakota, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast

Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West;

and that said premises be sold to satisfy the said lien and costs; and

Whereas, a copy of said judgment is hereto attached and made a part of this special execution.

Wherefore, we command that you execute the said judgment by making a sale of the premises above described, or so much thereof as may be necessary to satisfy the [fol. 62] amount so adjudged to be due to the plaintiff with the costs and expenses of sale in accordance with the requirements of said judgment, and apply the proceeds realized from said sale in conformity with said judgment and make your return to the clerk of this court.

Witness the Honorable C. W. Buttz, one of the judges of the District Court in and for the County of Ramsey, Judicial District number Two, State of North Dakota, and my hand and the seal of this court this 25th day of June, A. D. 1932.

Herman Stenseth, Clerk of Court. (Seal.)

Filed and Issued Jun. 25, 1932. District Court, Ramsey Co., N. Dak. Aug. 16, 1932. Returned. Herman Stenseth, Clerk.

Received with within special execution and notice of sale issued as therein required this 25th day of June, A. D. 1932.

Thos. B. Regan, Sheriff of Ramsey County, N. D.,
by A. T. Chisholm, Deputy.

[File endorsement omitted.]

[fols. 63-67] Copy of judgment and decree, attached to special execution omitted by stipulation because appearing herein, supra.

[fol. 68] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

NOTICE OF SALE ON SPECIAL EXECUTION—Filed June 25, 1932

Notice is hereby given that under and by virtue of the judgment and decree entered in the above entitled action and special execution issued out of the District Court in and for the County of Ramsey and State of North Dakota on the 25th day of June, A. D. 1932, in the above entitled action, I have levied upon the real property hereinafter described and which is described in said special execution and which judgment that the plaintiff had a lien upon said premises by virtue of an attachment herein from the 1st day of December, 1931, prior to any and all claims of the defendants herein, and by virtue of said special execution I will on the 30th day of July, A. D. 1932, at the hour of two o'clock P. M., on said day, offer for sale and sell to the highest bidder for cash, at the front door of the court house in the city of Devils Lake, County of Ramsey and State of North Dakota, the following described real estate and premises in said special execution described, as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One hundred fifty-two (152) North of Range Sixty-two (62) West, in Ramsey County, North Dakota;

and all of the right, title and interest of said defendants therein and all of the right, title and interest which they had therein on the 1st day of December, 1931;

To satisfy the $3,955.19, together with the costs and expenses of sale.

Dated this 27th day of June, A. D. 1932.

[fol. 69] Thos. B. Regan, Sheriff of Ramsey County, North Dakota, by A. T. Chisholm, Deputy. F. R. Stevens and Traynor & Traynor, Attorneys for Plaintiff, Devils Lake, North Dakota.

[File endorsement omitted.]

[fols. 70 & 71] IN DISTRICT COURT OF RAMSEY COUNTY

AFFIDAVIT OF PUBLICATION—Filed Aug. 16, 1932

STATE OF NORTH DAKOTA,
County of Ramsey, ss:

A. J. Le Duc of said State and County, being duly sworn, on his oath says: That he is the foreman of the Devils Lake World, a weekly newspaper of general circulation, duly qualified to publish legal notices, and printed and published in Devils Lake, in said County and State, and has been during the time hereinafter mentioned, that he has personal knowledge of the facts herein stated, and that the advertisement of Notice and Sale on Special Execution, a printed copy of which is hereunto annexed, was printed and published in every copy of each issue of said newspaper for a period of five consecutive weeks, to-wit: June 29, 1932, July 6, 1932, July 13, 1932, July 20, 1932, July 27, 1932.

And the fee therefore is $23.10.

A. J. Le Duc.

Subscribed and sworn to before me this 28th day of July, 1932. B. A. Stefonowiz, Notary Public, Ramsey County, N. Dak. (Seal.) My commission expires Sept. 15, 1932.

Notice of sale on special execution omitted, printed side page 68 ante.

[fol. 72] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

SHERIFF'S REPORT OF SALE AND RETURN OF SPECIAL EXECUTION—Filed Aug. 16, 1932

To the Honorable The District Court within and for the County of Ramsey and State of North Dakota:

In pursuance and by virtue of the judgment of this court made and given in the above entitled action, which judgment was rendered on the 25th day of June, A. D. 1932, before the Honorable C. W. Buttz, one of the Judges of said

Court, by which it was ordered and adjudged that the plaintiff have judgment against the defendant Grace Lewis Connell in the total sum of $3,928.45 and that such judgment was a judgment in rem and that the plaintiff had a good, valid and subsisting first and prior lien for said amount on the premises hereinafter described and that such lien dated from the 1st day of December, A. D. 1931, and that such judgment provided further that said premises, or so much thereof as may be necessary to pay the amount adjudged to be due to the plaintiff as aforesaid, and the costs herein, be sold to satisfy the same.

And by virtue of a writ of special execution to me issued out of and under the seal of this court in and for the County of Ramsey and State of North Dakota on the 25th day of June, A. D. 1932, reciting said judgment, which writ is hereto attached, I, the subscriber, the sheriff in and for the County of Ramsey and State of North Dakota and the person appointed in said judgment to make said sale, do respectfully certify and report that in pursuance of said judgment and said writ I advertised said premises to be sold by me at public auction at the front door of the court house in the city of Devils Lake, County of Ramsey and State of North Dakota, at the hour of two o'clock [fol. 73] P. M., on the 30th day of July, A. D. 1932, to satisfy said judgment and interest and costs herein, such advertisement having been made in the Devils Lake World, a newspaper of general circulation printed and published at Devils Lake, Ramsey County, North Dakota, the county in which said mortgaged premises are situated, once a week for at least thirty days prior to the making of said sale, to-wit, on the 29th day of June, and on the 6th, 13th, 20th and 27th days of July, A. D. 1932, and which notice and affidavit of publication thereof are hereto attached and made a part of this report.

I do further certify and report that on the 30th day of July, A. D. 1932, at the hour of two o'clock P. M., being the day and time upon which said premises are advertised to be sold as aforesaid, I attended at the time and place fixed for said sale at the front door of the court house in the city of Devils Lake, County of Ramsey and State of North Dakota, and exposed said land and premises for sale at public auction to the highest bidder as directed by said judgment and writ and that the said land and prem-

ises were then and there openly and fairly struck off and sold by me in the manner following, to-wit:

I first offered said land and premises for sale in tracts or parcels of legal subdivisions of forty acres each, then in tracts or parcels of legal subdivisions of multiples of forty acres each up to and including legal subdivisions of four hundred and eighty acres each. Then in any other legal sub-division or any combination or combinations thereof that anyone present might care to bid on, but received no bid or bids therefor. I then offered said land and premises for sale in one tract or parcel and the plaintiff above named, Eva S. Walker, offered and bid therefor the sum of $3,992.89, and I then and there openly and fairly struck off and sold the above described land and premises to the said Eva S. Walker for the said sum of $3,992.89, she being the highest and best bidder therefor and for each parcel or tract included therein.

[fol. 74] That the said premises described herein and in said special execution are situated in the County of Ramsey and State of North Dakota and described as follows, to-wit:

Northwest Quarter (N. W. ¼), North Half of Northeast Quarter (N. ½ N. E. ¼), Northeast Quarter of Southeast Quarter (N. E. ¼ S. E. ¼), South Half of Northeast Quarter (S. ½ N. E. ¼) of Section Fifteen (15), and Northeast Quarter (N. E. ¼) of Section Twenty-two (22), all in Township One Hundred fifty-two (152) North of Range Sixty-two (62) West.

I further certify that the costs and fees for making said sale were as follows:

Newspaper fees	$23.10
Sheriff fees	10.60
Register of deeds fees	2.50
Clerk of Court fees	1.50
Total	$37.70

And I further certify and return that I have executed, acknowledged and delivered to the said purchaser the usual certificate of sale of said premises.

And I further certify that the plaintiff having purchased the said premises in her own name the proceeds of said sale were applied as follows:

1. To the costs and expenses of sale above mentioned and set forth and the same have been fully paid to the proper persons and the balance of the amount of said sale satisfies the judgment herein; that I have retained in my hands the sum of $10.60 to pay my fees and commission and that no deficiency remains herein, which is respectfully submitted.

Dated this 30th day of July, A. D. 1932.

Thos. B. Regan, Sheriff of Ramsey County, North Dakota, and the person appointed by the court to make the sale of the premises herein described, by E. F. Bastion, Deputy Sheriff.

[File endorsement omitted.]

[fol. 75] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

STIPULATION RE EXTENSION OF TIME—Filed Oct. 11, 1932

A judgment in favor of the plaintiff and against the defendants having been entered in the above entitled action on the 25th day of June, 1932, and the defendants desiring to appeal therefrom to the supreme court of the state of North Dakota, and in order to prepare the record for presentation of the same to the supreme court and furnish a transcript it is necessary on account of the absence of the court reporter that the time be extended. It is therefore hereby stipulated between the attorneys for the respective parties that the time for procuring a transcript of the evidence, and settling the statement of the case be extended for a period of 60 days, and that the Court may so order.

Dated this 12th day of July, 1932.

F. R. Stevens, Traynor & Traynor, Attorneys for the Plaintiff. John A. Jorgenson, W. M. Anderson, Attorneys for the Defendant.

ORDER

Upon reading the foregoing stipulation it is hereby ordered the time for obtaining a transcript and settling the statement of the case in the above entitled action be and [fol. 76] the same is hereby extended for a period of — days from this date.

Dated July 12th, 1932.

By the Court:

—— ——, Judge.

[File endorsement omitted.]

[fol. 77] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

NOTICE OF MOTION FOR ORDER CONFIRMING SALE—Filed Aug. 16, 1932

To the above named Defendants and to their attorneys, W. M. Anderson, Devils Lake, North Dakota, and John A. Jorgenson, Los Angeles, California:

Please take notice that on the 16th day of August, A. D. 1932, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, the plaintiff, by his attorneys, F. R. Stevens and Traynor & Traynor, of Devils Lake, North Dakota, will make a motion before the Honorable C. W. Buttz, Judge, at Chambers in the Federal Building, in the city of Devils Lake, Ramsey County, North Dakota, for an order of the court confirming the sale of the real estate in accordance with the attached report of sale. That said motion will be made upon all of the files and records in said action.

Dated this 30th day of July, A. D. 1932.

F. R. Stevens and Traynor & Traynor, Attorneys for Plaintiff, Devils Lake, North Dakota.

[File endorsement omitted.]

[fol. 78] IN DISTRICT COURT OF RAMSEY COUNTY

[Title omitted]

ORDER CONFIRMING SALE—Filed Aug. 16, 1932

Upon reading and filing the report of Thos. B. Regan, sheriff of Ramsey County, North Dakota, hereinbefore appointed herein to sell the premises mentioned and described in the special execution in this action and in the judgment herein, which report bears date the 30th day of July, A. D. 1932, and the court having carefully considered the proceedings of said officer, and it appearing to the satisfaction of the court that said sale has in all respects been made in compliance with the statute and with the judgment and decree of this court and due notice thereof having been given to the attorneys for said defendants, and said matter coming on regularly to be heard pursuant to motion duly made and served on this 16th day of August, A. D. 1932.

Now, on motion of Traynor & Traynor, Devils Lake, North Dakota, attorneys for said plaintiff, it is ordered that the said sale and the said report thereof be and the same are in all things confirmed and the clerk of said court is hereby ordered and directed to enter upon the records of this court that the court being fully advised in the premises is satisfied that said sale has been in all things duly and legally made.

It is further ordered, that the sheriff of said County of Ramsey, State of North Dakota, or his successor in office, execute and deliver to said Eva S. Walker or her assigns a good and sufficient deed for and to the herein described premises and which premises were described in the judgment herein [fol. 79] at the expiration of one year from the date of said sale unless the same be redeemed in the meantime in the manner provided by law.

Dated this 16th day of August, A. D. 1932.

C. W. Buttz, Judge.

[File endorsement omitted.]

[fol. 80] Ex. 1—G. N. T.

$3500.00 Los Angeles, California, Nov. 1, 1930.

One year after date, for value received, I promise to pay to Eva S. Walker, or order, at Guaranty Building and Loan Association of Los Angeles, at its office, 6333 Hollywood Boulevard, in the City of Los Angeles, Three thousand and five hundred Dollars, with interest, payable annually, at the rate of 7 per cent. per annum from date until paid, and attorney's fees of ten per cent. on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced, or other proceeding be taken to enforce the payment of this note. Should the interest not be paid when due, then both principal and interest shall become immediately due and payable at the option of the holder of this note.

Should the interest not be paid when due, it shall be compounded monthly thereafter, and bear the same rate of interest as the principal. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to extensions of time at or after the maturity hereof, and hereby waive diligence, protest, demand and notice of every kind.

Should this note be signed by more than one person, firm or corporation, all the obligations herein contained shall be considered joint and several obligations of each signer hereof.

Grace Lewis Connell.

Filed in District Court, Ramsey Co., N. Dak., Aug. 31, 1932.

[fols. 81-83] Ex. 2, G. N. T.—Warranty deed—omitted by stipulation because appearing herein subsequently as Respondent's Exhibit No. 2.

[fols. 84 & 85] Sheriff's notice of levy, filed Aug. 31, 1932, omitted by stipulation because appearing herein as part of Respondent's Exhibit No. 3.

[fol. 86] Warrant of attachment omitted by stipulation because appearing herein as part of respondent's Exhibit No. 3.

STATE OF NORTH DAKOTA,
County of Ramsey.

I hereby certify that this instrument was filed for record in my office on the 1st day of Dec. 1931, at 4:30 o'clock P. M., and is duly recorded in Book R, Misc. page 51.

Geo. Elmslie, Register of Deeds, by —— ——, Deputy.

Filed in District Court, Ramsey Co., N. Dak., Aug. 31, 1932.

[fol. 87] Ex. "A." G. N. T.

Now comes the defendants and move the court to dismiss as follows:

1. That it appears by the files and the records in this action that the defendant Grace Connell, duly filed her petition in bankruptcy in the U. S. District Court of Los Angeles, California and was duly adjudicated a bankrupt on the 24th day of February, 1932 therein, and it also appears by the records of said court judicial notice of which is called to the attention of this court, that a trustee was thereafter appointed who is now duly acting as such. That under the provisions of Sec. 70a, sub. sec. 4, U. S. Statutes, the trustees shall be vested by operation of law with any property transferred by the bankrupt in fraud of his creditors, There being no four months limitation on this claim of transfers, and this provision includes fraudulent conveyances which are so by the common law, by statute law and by other recognized rule of law of the state. Buttz vs. James, 156 N. W. 551, quoted in Busch vs. Export Storage Co. (C. C.) 136 Fed. 918. The Court's attention at this time is called to the fact that said matters have arisen after the commencement of this action by the plaintiff, and the defendants therefore at this time make a motion that the duly appointed trustee in bankruptcy in this action be substituted as party plaintiff.

2. That it appears from the files and the records in this action that the defendant Grace Connell was adjudicated a bankrupt on the 24th day of February, 1932, and that the

attachment proceedings were commenced December 1st, 1932, less than four months from the adjudication of bankruptcy therein, and that by reason thereof said attachment is therefore null and void and of no effect. Gray vs. Arnot, 31 N. D. 461, 154 N. W. 268.

3. That the attachment claimed as to the defendants Adams is hereby moved to be discharged on the grounds that no ground of attachment is set out in the affidavit and in [fol. 88] the complaint warranting or permitting an attachment as against them, as there is no allegation in the complaint or said affidavit for the recovery of money as against them, which is a preliminary step which must be taken before attachment issues. Code 9537, Grand Lodge A. O. U. W. vs. Wahlin, 237 N. W. 878.

4. That the plaintiff has filed her claim in the said U. S. bankruptcy court at Los Angeles, California, and this court therefore has no jurisdiction to continue and try said action. This fact the court's attention is called to and requested to take judicial notice thereof.

Filed in District Court, Ramsey Co., N. Dak., Aug. 31, 1932.

[fol. 89] Ex. "B" G. N. T.

District Court of the United States, Southern District of California, Central Division

No. 18256-C In Bankruptcy

In the Matter of Grace Lewis Connell, Bankrupt

At Los Angeles, in said District, on the 2*th* day of February, 1932, before the said Court in Bankruptcy, the petition of Grace Lewis Connell that she be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said Grace Lewis Connell is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to James L. Irwin, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and the said Grace Lewis Connell shall attend before said referee on the 2nd day of March, 1932, at his office in Los Angeles, California, at 10 o'clock

a. m., and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said matter in bankruptcy.

Dated February 24th, 1932.

Geo. Cosgrave, District Court.

[fol. 90] (Indorsed:) Filed Feb. 24, 1932, at 20 min. past 11 o'clock A. M. R. S. Zimmerman, Clerk. L. B. Figg, Deputy.

I, R. S. Zimmerman, Clerk of said District Court, do hereby certify the foregoing to be a full, true, and correct copy of the Order of Adjudication and Reference, in the matter of Grace Lewis Connell, Bankrupt No. 18256-C in Bankruptcy, now remaining on file and of record in my office.

Attest my hand and seal of said District Court, this 24th day of February, 1932.

R. S. Zimmerman, Clerk. By (Signed) R. S. Zimmerman, Clerk. (Seal.)

Filed March 7, 1932, Herman Stenseth, Clerk.

[fol. 91] UNITED STATES OF AMERICA,
Southern District of California, ss:

I, Wm. P. James, United States District Judge for the Southern District of California, do hereby certify that I am well acquainted with the handwriting of R. S. Zimmerman, whose name is subscribed to the foregoing Certificate and Attestation; that the seal annexed thereto is the seal of said District Court; and I do further certify that he was, at the time of signing the same, the duly appointed, qualified and acting Clerk of the District Court of the United States, in and for the Southern District of California, and that all his acts as such Clerk are entitled to full faith and credit, and I do further certify that such attestation is in due form according to law.

In witness whereof, I have hereunto subscribed my name at Los Angeles, in the Southern District of California, this twenty-fourth day of February, in the year of our Lord One Thousand nine hundred and thirty-two, and of our Independence of these United States the one hundred and fifty-sixth.

Wm. P. James, United States District Judge, Southern District of California.

[fol. 92] UNITED STATES OF AMERICA,
Southern District of California, ss:

I, R. S. Zimmerman, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify that I am well acquainted with the handwriting of the Honorable Wm. P. James, United States District Judge for the Southern District of California, whose name is subscribed to the foregoing certificate and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, United States District Judge for the Southern District of California, duly commissioned, qualified and acting and authorized by law to execute said certificate.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Los Angeles, in the State of California, this 24th day of February, in the year of our Lord one thousand nine hundred and thirty-two, and of our Independence the One Hundred and fifty-sixth.

R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California.
(Seal.)

Filed March 7, 1932, at 2 P. M. Herman Stenseth, Clerk.
Filed in Office of Clerk of Supreme Court, State of North Dakota, Nov. 19, 1932.

[fols. 93 & 94] [File endorsements omitted.]

[fol. 95] IN DISTRICT COURT OF RAMSEY COUNTY, SECOND JUDICIAL DISTRICT

EVA S. WALKER, Plaintiff,

vs.

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS, Defendants

Statement of Evidence—Filed Oct. 10, 1932

The above entitled matter came on for trial before the Hon. C. W. Buttz, Judge of the District Court within and

for the Second Judicial District State of North Dakota, at the adjourned March, 1932, term of said Court, held at the City of Devils Lake, County of Ramsey and State of North Dakota, on the 14th day of May, 1932. The plaintiff appeared by her counsel, Traynor & Traynor, Esqs., and Hon. F. R. Stevens, of Devils Lake, North Dakota, and the defendants appeared by their counsel, W. M. Anderson, Esq., of Devils Lake, North Dakota. The trial was had to the Court without a jury and the following proceedings were had:

Mr. Anderson files a motion in writing, marked Exhibit "A" for identification, and which motion reads as follows:

EXHIBIT "A"

"Now come the defendants and move the Court to dismiss as follows:

"1. That it appears by the files and the records in this action that the defendant Grace Connell, duly filed her petition in bankruptcy in the U. S. District Court of Los Angeles, California, and was duly adjudicated a bankrupt on the 24th day of February, 1932 therein, and it also appears by the records of said court judicial notice of which is called to the attention of this court, that a trustee was thereafter appointed who is now duly acting as such. That under the provisions of Sec. 70a, sub sec. 4, U. S. Statutes, the trustee shall be vested by operation of law with any property transferred by the bankrupt in fraud of his creditors. There being no four months limitation on this class [fol. 96] of transfers, and this provision includes fraudulent conveyances which are so by the common law, by statute law, and by other recognized rule of law of the state.

Buttz vs. James, 156 NW, 551, quoted in Busch vs. Export Storage Co. (C. C.) 136 Fed. 918. The Court's attention at this time is called to the fact that said matters have arisen after the commencement of this action by the plaintiff, and the defendants therefore at this time make a motion that the duly appointed trustee in bankruptcy in this action be substituted as party plaintiff.

"2. That it appears from the files and records in this action that the defendant Grace Connell was adjudicated a bankrupt on the 24th day of February, 1932, and that the attachment proceedings were commenced December 1st,

1932, less than four months from the adjudication of bankruptcy therein, and that by reason thereof said attachment is therefore null and void and of no effect. Gray vs. Arnot, 31 N. D. 461, 154 N. W. 268.

"3. That the attachment claimed as to the defendants Adams is hereby moved to be discharged on the grounds that no ground of attachment is set out in the affidavit and in the complaint warranting or permitting an attachment as against them, as there is no allegation in the complaint or said affidavit for the recovery of money as against them, which is a preliminary step which must be taken before attachment issues. Code 9537, Grand Lodge A. O. U. W. vs. Wahlin, 237 N. W. 878.

"4. That the plaintiff has filed her claim in the said U. S. Bankruptcy Court at Los Angeles, California, and this Court therefore has no jurisdiction to continue and try said action. This fact the court's attention is called to and requested to take judicial notice thereof."

The Court: The motion is over-ruled.

(Note for $3500.00 marked Exhibit "1" for identification.)

[fol. 97] Mr. Traynor: We will offer Exhibit "1" in evidence.

Exhibit "1" reads as follows:

EXHIBIT "1"

"3500.00. Los Angeles, California, Nov. 1, 1930.

"One year after date, for value received, I promise to pay to Eva S. Walker, or order, at Guaranty Building and Loan Association of Los Angeles, at its office, 6333 Hollywood Boulevard, in the City of Los Angeles, Three Thousand and Five Hundred Dollars, with interest payable annually at the rate of 7 per cent. per annum from date until paid, and attorney's fees of ten per cent. on the amount then unpaid, if placed in the hands of an attorney for collection, or if suit be commenced, or other proceeding be taken to enforce the payment of this note. Should the interest not be paid when due, then both principal and interest shall

become immediately due and payable at the option of the holder of this note.

"Should the interest not be paid when due, it shall be compounded monthly thereafter, and bear the same rate of interest as the principal. Principal and interest payable in Gold Coin of the United States of America of the present standard. The makers, sureties, guarantors and endorsers of this note hereby consent to extensions of time at or after the maturity hereof, and hereby waive diligence, protest, demand and notice of every kind.

"Should this note be signed by more than one person, firm or corporation, all of the obligations herein contained shall be considered joint and several obligations of each signer hereof.

"Grace Lewis Connell."

(Warranty Deed marked Exhibit "2" in evidence.)

Mr. Traynor: We will offer Exhibit "—" in evidence.

Exhibit "2" reads as follows:

Exhibit "2"

"Document No. 91762

Warranty Deed

This Indenture, Made this 12th day of June, 1931, between Grace Connell, formerly Grace Stanton and Edward [fol. 98] E. Connell, her husband, parties of the first part, and Myrle C. Adams & Mary Adams, his wife, parties of the second part;

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten Dollars, to them in hand paid by said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, Forever, all that tract or parcels of land lying and being in the County of Ramsey, State of North Dakota, and described as follows, to-wit:

Parcel 1

The Northwest Quarter (N.W.¼) of Section Fifteen (15) in Township One Hundred Fifty-two (152) North, Range Sixty-two (62) West of the Fifth Principal Meridian.

Parcel 2

The Northeast Quarter (N.E.¼) of Section Twenty-two (22) Township One Hundred Fifty-two North, Range Sixty-two (62) West of the Fifth Principal Meridian.

Parcel 3

The *Half* Half (N.½) of the Northeast Quarter (N.E.¼) of Section Fifteen (15) in Township One Hundred Fifty-two (152) North of Range Sixty-two (62) West of the Fifth Principal Meridian.

Parcel 4

The Northeast Quarter (N.E.¼) of the Southeast Quarter S.E.¼) and the South Half (S.½) of the Northeast Quarter (N.E.¼) of Section Fifteen (15) in Township One Hundred Fifty-two (152), Range Sixty-two (62) West of the Fifth Principal Meridian.

To have and to hold the same together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said parties of the second part, their heirs and assigns forever. And the said Grace Connell, formerly Grace Stanton and Edward E. Connell, her husband, parties of the first part, for their heirs, executors and administrators, do covenant with the parties of [fol. 99] the second part, their heirs and assigns, that they are well seized in fee of the land and premises aforesaid, and have good right to sell and convey the same in the manner and form aforesaid; that the same are free from all incumbrances; and that the above bargained and granted land and premises in the quiet and peac-able possession of said parties of the second part, their heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In witness whereof, the said parties of the first part hereunto set their hands the day and year first above written.

Grace Connell, Edward E. Connell.

Signed, and delivered in the presence of C. W. Gorham.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 12th day of June, 1931, before me personally appeared Grace Connell, formerly Grace Stanton and Edward E. Connell, her husband, known to me to be the same persons described in, and who executed the within and foregoing instrument and severally acknowledged that they executed the same.

C. W. Gorham, Notary Public in and for Los Angeles County, State of California. (Seal.)

My commission expires Jan. 26, 1934.

Ramsey County, North Dakota—Delinquent Taxes paid by Sale of Lands within July 10, 1931.

J. O. Peterson, County Auditor, by Sara Webster, Deputy. (Seal.)

Filed for record this 10th day of July 1931 at 10:40 A. M., in book 40 of Deeds, on page 448.

Geo. Elmslie, Register of Deeds.

I hereby certify that I have compared the within instrument with the original and that it is a true and correct [fol. 100] copy of the same and the whole thereof, and that the above is a true copy of the filing thereon.

Geo. Elmslie, Register of Deeds. (Seal.)"

(Sheriff's notice of levy and warrant of attachment marked Exhibit "3" for identification.)

Mr. Traynor: We will offer Exhibit "3" in evidence, together with the recording thereof; and the same as to Exhibit "2," with the recording thereof.

Mr. Anderson: "3," that is the certified copy of deed with the recording thereof?

Mr. Traynor: "3" is the notice of levy and attachment. "2" is the deed.

Mr. Anderson; All right.

Exhibit "3," offered in evidence, reads as follows:

EXHIBIT "3"

"STATE OF NORTH DAKOTA,
County of Ramsey, ss:

IN DISTRICT COURT, SECOND JUDICIAL DISTRICT

EVA S. WALKER, Plaintiff,

vs.

GRACE LEWIN CONNELL, MERLE C. ADAMS, and MARY ADAMS, Defendants

Sheriff's Notice of Levy

To the Defendants named in the above entitled action:

Take Notice that by virtue of a certain writ of attachment duly issued in this action by Hon. Herman Stenseth, Clerk of the District Court within and for Ramsey County, State of North Dakota, I have this day levied upon the following described real property, to-wit:

Northwest Quarter (N.W.¼), North Half of Northeast Quarter (N.½ N.E.¼), Northeast Quarter of Southeast Quarter (N.E.¼S.E.¼), South Half of Northeast Quarter (S.½N.E.¼) of Section Fifteen (15), and Northeast Quarter (N.E.¼) of Section Twenty-two (22), all in Township One Hundred Fifty-two (152), North of Range Sixty-two (62) West, Ramsey County, N. D.

[fol. 101] That said levy is made for the sum of $3500.00, with interest thereon at the rate of 7% per annum from and since November 1st, 1930, together with the costs herein.

Any claim or demand you may have for exemption against said levy must be made by you within ten days from the service of this notice.

Dated this 1st day of December, A. D. 1931.

Thos. B. Regan, Sheriff of Ramsey County, North Dakota, by —— ——, Deputy Sheriff.

STATE OF NORTH DAKOTA,
County of Ramsey, ss:

DISTRICT COURT, SECOND JUDICIAL DISTRICT

EVA S. WALKER, Plaintiff,

vs.

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS, Defendants

The State of North Dakota to the Sheriff of Ramsey County, N. D., Greeting:

A verified complaint in the above entitled action having been filed in the office of the Clerk of said Court, setting forth a proper cause of action for Attachment, in which the Plaintiff demands judgment against the defendant Grace Lewis Connell, for the sum of Three Thousand Five Hundred ($3500.00) Dollars and interest at the rate of 7 per cent. per annum from the 1st day of November, A. D. 1930, and an affidavit having also been filed stating that the defendants and each and all of them are non residents and none of them are residents of the State of North Dakota,

Now, you are hereby commanded and required to attach and safely keep all the property of said defendants within your County not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff demand, with [fol. 102] costs and disbursements, unless the defendants deliver to you an undertaking in favor of the plaintiff with sufficient surety to the effect that defendants will pay any judgment which the plaintiff may obtain against her in the action, or an undertaking with like surety to the effect that the property of said defendants which has been or is about to be attached shall be forthcoming in substantially as good condition as it is at the time of giving the undertaking, to answer such judgment, such undertaking in either event to be in amount equal to the value of such property, according to your inventory, in either of which cases you will take such undertaking, and when your Warrant shall be fully executed or discharged, you are required to return the same with your proceedings to this Court.

Witness, The Honorable C. W. Buttz, Judge of the District Court, in and for said County, and the seal of said

Court at Devils Lake, North Dakota, this 1st day of December, 1931.

Herman Stenseth, Clerk of Court. (Seal of Court.)
By H. E. Stenseth, Deputy."

"Document No. 92385

STATE OF NORTH DAKOTA,
County of Ramsey, ss:

I hereby certify that this instrument was filed for record in my office on the 1st day of Dec. A. D. 1931, at 4:30 o'clock, P. M., and is duly recorded in Book R Misc., page 51.

Geo. Elmslie, Register of Deeds, by ——. ——, Deputy."

CHARLES W. MORRIS called as a witness for the plaintiff and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stevens:

Q. Mr. Morris, you are the attorney-in-fact for Eva S. Walker, the plaintiff in this action, are you not?

A. Yes, sir.

[fol. 103] Q. And you have your power of attorney on record in the register of deeds' office in Ramsey County?

A. Yes, sir.

Q. Under your power of attorney, Mr. Morris, you have power to appear for Eva S. Walker and transact all the business relative to her property, or that she could herself if she were present in person?

A. Yes, sir.

Q. I will show you Exhibit "1." You have seen that instrument before, have you?

A. Yes, I have.

Q. You have talked personally with the maker of this note?

A. Mrs. Connell? Yes.

Q. Grace Lewis Connell?

A. Yes.

Q. Tell the Court what was said?

Mr. Traynor: You had better place the date.

Q. Where was it that you had this talk with Grace Lewis Connell?

Mr. Traynor: And when?

A. In January, 1931, Mrs. Walker and Mr. Smith and myself went down to Mrs. Connell's home in Los Angeles and talked to her about this note. I had suggested that Mrs. Connell give a mortgage on this land in North Dakota to secure the note for Mrs. Walker, and Mrs. Connell went on to say that she thought that she would like to talk it over with her son and see whether he approved of it or not, that he generally advised her in her business, and she would like to talk it over with him; and, too, she wanted to talk it over with Mr. Connell, and she thought he might have the money and could pay the cash.

Q. Which son?

A. Merle Adams. I believe he is the oldest son. I am not sure.

Mr. Traynor: The grantee in this deed, Exhibit "2"?

A. Yes.

Q. Did she refuse to give a mortgage or just ask for time?

A. No, she wanted time to consider it. She said she [fol. 104] didn't know whether Mr. Connell had the cash to pay it, and, if not, she wanted to talk it over with Merle because he generally advised her.

Q. Was there anything said in your presence there, in the presence of Mrs. Connell, what the original consideration of the note was?

A. Yes, it seems that this dates back a good many years.

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial.

The Court: Just say what she did.

Mr. Anderson: And not within the issues of this case.

A. She said that—she went on to explain to me——

The Court: Just tell what she said. When you say she explained I don't know what you mean.

A. She said Mr. Smith and Mrs. Smith, and Mrs. Walker had been friends of hers a good many years, and when Mr. Stanton died this property was mortgaged and Mrs. Smith loaned her the money to pay off the mortgage and carry on

without a foreclosure at that time, which would have happened.

Mr. Anderson: This is objected to as incompetent, irrelevant and immaterial and having no bearing on the issues of this case. And there is no dispute as to any consideration, and it is immaterial what the consideration was for. It is just some of Stevens' sob stuff, that is all.

Q. You can go on, what you or anyone while you were present and Mrs. Connell was present said relative to this debt and giving security, what she was going to do about it, what they said or what you said?

Mr. Traynor: In connection with this note and the land.

A. I was just trying to remember what was said there. Oh, she said she would see Merle and she would let us know within a few days just how she wanted to handle the thing.

Q. Well, then, when did you see her again?

A. Well, I talked to her again about a month afterwards.

Q. What did *hse* (she) say then?

[fol. 105] A. She said she had not seen Merle regarding it yet, but that she would and that she would call Mrs. Walker and let her know; she would call her on the phone. And a few days after that I left for North Dakota, so I didn't see her again.

Q. Then when did you first know of this transfer of the North Dakota land?

A. I received a letter from Mrs. Walker sometime in June of the same year and she said in this letter that Mrs. Connell had called her and said she had transferred the property to Merle.

Mr. Anderson: That is objected to as hearsay.

A. I went up to the Court House——

Mr. Anderson: Just wait. You can't testify until the Court rules.

The Court: I am not ruling.

Mr. Anderson: No, but I want to object to that as heresay and not the best evidence,—the letter itself shows the best evidence.

The Court: Have you the letter?

A. No.

The Court: Where is it?

A. I destroyed it. I do not keep her letters. Once in a while I keep one, but——

Q. Did Mrs. Connell say anything in your presence that she had always considered that this land was security for this debt?

A. Oh, yes, she said——

Mr. Anderson: Just a minute. That is objected to as leading and not specific as to time or place when the conversation took place, and it does not call for the conversation itself.

Q. You may answer what she said?

The Court: Look out for these objections. There are a lot of these objections that may be very good. You can't try a case on hearsay, and when you have one of these cases where I don't rule you see you are virtually making your own record.

[fol. 106] Mr. Traynor: You had better get what——

A. That is the time I was talking to her in January, 1931. Mrs. Connell said then that she always felt the land here was good security for the note, and, being old friends as they had been so many years, that they never felt it necessary to give a mortgage on it.

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial and not within the issues of the case and I move to strike it out.

Q. Did she say at that time that she had any idea of selling the property?

A. Oh, no.

Mr. Anderson: This is objected to as incompetent, irrelevant and immaterial.

Q. She didn't mention selling it?

Mr. Anderson: That is objected to as leading.

A. No.

Q. Did she say anything about mortgaging it to anybody else?

A. No.

Mr. Anderson: That is objected to as leading.

Q. Did she say whether she would or would not mortgage it to anybody else?

Mr. Anderson: That is objected to as leading.

A. She didn't say one way or the other.

Q. Did she say anything about owing anyone else besides Mrs. Walker?

Mr. Anderson: Same objection and leading and not calling for the conversation and what was said at the time.

A. No.

Mr. Traynor: At the time you had this conversation with Mrs. Connell was there anything said at all by her about her owing Merle Adams or Mary Adams, his wife, or about transferring the property to them?

Mr. Anderson: That is objected to as leading and suggestive.

[fol. 107] The Court: Let the record show that this case is being tried under the so-called Newman law and that consequently I am not ruling.

A. I don't remember. Let me see—Mrs. Connell said——

The Court: Mrs. Who?

A. Mrs. Connell said that they had been friends together, the Smith family and her family, for a good many years, and that Mrs. Walker would certainly get her money as far as the farm could produce it, that she owed no other bills, and that she didn't want to mortgage it if she didn't have to.

The Court: This was in response to a request to her to give a mortgage to secure the debt?

A. I asked her to give a mortgage on it.

Mr. Traynor: And this was in California in January, 1931?

A. Yes.

The Court: How long before the transfer was that?

A. It hadn't gone on then?

By Mr. Stevens:

Q. How long before?

A. This conversation was about five months before the transfer was made.

Q. Was there any other conversation between these parties in Mrs. Connell's presence?

Mr. Traynor: At that time?

A. At that time Mr. Smith said to me that Mrs. Connell had been friends of the Smith family a good many years and that if Mrs. Connell didn't want to give a mortgage that he felt that she shouldn't be pressed for it because she had always paid the interest and had always taken care of it in good shape.

Mr. Anderson: That is objected to as hearsay.

The Court: That is favorable to you.

Q. Well, are you acquainted with Merle C. Adams, the grantee in this deed?

[fol. 108] A. I have met him, yes.

Q. Do you know anything about him, as to his reputation in the neighborhood where he lives?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial, and not within the issues of this case.

The Court: Who are you asking about?

Mr. Anderson: Merle Adams.

Mr. Stevens: The grantee here.

Mr. Anderson: Anything about his reputation in the neighborhood in which he lives.

The Court: Go ahead.

A. I know he lives at Wilmington, California. I have been at his home there, and he works in a real estate office there, selling insurance. And I know that he does and has owed money down there as long as he has been there.

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial and move to strike out the answer on the ground that it is absolutely incompetent.

The Court: That motion is good, of course. He didn't ask you what you answered. He asked you about the repu-

tation of this man; that is, what people think of him and what people say of him in the community in which he lives.

(Question read by reporter.)

The Court: Reputation for what, Mr. Stevens?

Mr. Stevens: Financial standing.

The Court: Honesty, integrity, or something else?

Mr. Stevens: Honesty and integrity and whether or not from this knowledge that you have of his reputation he would be liable to have been a creditor of his mother to any extent?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial, and no foundation laid.

By Mr. Traynor:

[fol. 109] Q. This defendant, Merle C. Adams, you are acquainted with him, are you?

A. Yes, I know him.

Q. When did you become acquainted with him first?

A. I believe it was in 1927.

Q. He has been living in California continuously since then?

A. I believe so.

Q. You know what Adams has been doing during this time?

A. I don't believe he has done anything but sell insurance.

Mr. Anderson: That is objected to and I move——

Q. I asked if you know?

A. He hasn't sold——

Q. Do you know?

A. No, I don't know.

Q. You don't know what he has been doing in the last several years?

Mr. Anderson: That's already answered.

A. I know that he has been selling insurance, but I couldn't say that he has been doing it continuously all the time, because I haven't seen him. You see I have been here two years. I know he was doing that.

Q. Do you know if he is a man of property in California?

A. No.

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial and calling for a conclusion of the witness, and he said he didn't know.

Mr. Traynor: No, he didn't say he didn't know anything about that.

Q. Are you familiar with what his financial responsibility is and has been for the last three or four years?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial.

A. Yes.

Mr. Anderson: What is the question?

(Question read by reporter.)

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial, no foundation laid, the witness not [fol. 110] having shown himself competent to testify as to his financial responsibility, having admitted that he has been here for about two years in North Dakota.

Q. What is your answer?

A. Yes.

Q. What is his financial responsibility now and what has it been for the last three or four years?

Mr. Anderson: That is objected to as calling for a conclusion of the witness, the witness not having shown himself competent to testify as to his financial responsibility, and no foundation has been laid therefor.

A. I know that he rents a home there at Wilmington and lives there with his wife and runs a car there, and works in this real estate office selling insurance.

Mr. Anderson: I move to strike the answer out on the ground that it is not responsive.

Q. Is that all you know about his financial condition?

A. I know he is indebted to a number of people around Wilmington and has been for a long time.

Mr. Anderson: I move to strike that out on the ground it is not responsive.

Mr. Traynor: You may cross examine.

Cross-examination.

By Mr. Anderson:

Q. How long have you been in North Dakota, Mr. Morris?
A. I have been here three times in the last three years.
Q. How long did you stay here in North Dakota the first time you came here?
A. Three months.
Q. Where were you the rest of the time?
A. California.
Q. What part of California?
A. Los Angeles.
Q. And the second time?
A. I was here nine months.
Q. And the third time?
A. I believe it was ten months.
[fol. 111] Q. So, out of these three years you havn't been in California very long, much of the time, have you?
A. I imagine less than half of the time.
Q. Three months the second year and two months the third year?
A. Yes.
Q. And the rest of the time you have been here?
A. Yes.

Mr. Anderson: That is all.

F. R. Stevens called as a witness for the plaintiff and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Traynor:

Q. Your name is F. R. Stevens?
A. Yes.
Q. And you are the County Judge here in Ramsey County, North Dakota?
A. I am.
Q. You formerly lived at Crary, in this county?
A. I did.
Q. How long did you live there?
A. Since 1886.
Q. Until you moved here to Devils Lake to become county judge?

A. In January, 1925.

Q. You are acquainted with the defendant Grace Lewis Connell?

A. I am.

Q. And with the defendant Merle C. Adams?

A. I am.

Q. Are you acquainted with the defendant Mary Adams?

A. I have met her, but I wouldn't be well acquainted with her.

Q. Do you know the relationship between the defendant Merle C. Adams and the defendant Grace Lewis Connell?

A. Yes.

Q. What is it?

A. He is her son by her first marriage.

Q. Her son by her first marriage?

A. She came to Crary in about 1893, I think it was, and [fol. 112] Merle Adams then was a little boy.

Q. She was married to a fellow by the name of Adams?

A. Yes. She became divorced after she had been here a year from Adams.

Q. And when did she move from Crary?

A. From Crary?

Q. Yes.

A. Well, it was about 1919, I think.

Q. Was it while she was in Crary that she acquired the land in controversy in this lawsuit?

A. Yes, it was along about——

Mr. Anderson: There is no dispute as to that. We don't raise any point on that; we will stipulate that. There is no use going through all this rigmarole to prove that. We will admit that as far as that is concerned.

(Question read by reporter.)

A. Yes. That came to her by her second marriage.

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial. The defendants are willing to admit that she was the owner of the land, and the details leading up to the ownership are immaterial so long as we admit that she owns it.

Q. Mrs. Connell has lived in California continuously since about 1919?

A. She was back once or twice for a short time, but I don't think she established a home in Crary and I won't say that she didn't retain her home there and come back and live for a short time once or twice, but not to any extent.

Q. This defendant, Merle C. Adams, he lived with his mother in Crary?

A. Yes.

Q. How old a man is he,

A. Oh, I should say he must be thirty-five years old.

Q. Do you know?

Mr. Morris: He is older than that.

A. Well, maybe forty.

Q. Do you know what he does for a living?

[fol. 113] Mr. Anderson: That is objected to as calling for a conclusion of the witness.

Q. I asked if he knew——

A. Yes, I know. I have known something about him ever since——

Q. What has he been doing?

Mr. Anderson: That is objected to as calling for a conclusion of the witness, he not having shown himself competent to testify.

Mr. Traynor: He says he knows.

A. He worked in a bank up here west, I think it was Rugby, and he was also the leader of a band at Rugby until the Bank closed, and after the Bank closed he went to California, and when I knew him in California he was trying to do what in that city they call——

Mr. Anderson: That is objected to as calling for a conclusion of the witness.

Mr. Traynor: He is answering.

A. He was doing what they call a curbstone real estate business. He was affiliated with a real estate company and was trying to make deals on his own hook through their office.

Q. Is he a man of financial means?

A. I never heard of his having anything.

Mr. Anderson: I move to strike that out on the ground it is not responsive, and calling for hearsay.

Q. Are you familiar with his reputation in a financial way?

Mr. Anderson: That is objected to as incompetent, irrelevant and immaterial and not within the issues in this case.

A. Yes, with reference to his reputation among those that I knew knew him.

Q. What is that reputation?

Mr. Anderson: That is objected to as being incompetent, irrelevant and immaterial, the witness not having shown himself competent to testify to his reputation, the witness living in North Dakota continuously and the defendant in California for a long period of years.

[fol. 114] Q. You have kept in touch with his affairs so that you are familiar with his financial reputation?

A. I have.

Q. State what it is?

A. I know——

Mr. Anderson: I move to strike——

A. I knew his mother when she was here, and J. H. Smith when he was here. And I would ask about people in California, and the statement they all told me was that he was struggling along trying to make a living in the real estate business. He was affiliated with a real estate firm there, but dealt on a commission basis.

Mr. Anderson: That is objected to as hearsay and I move to strike it out on the ground it is hearsay and not responsive.

Q. Did the defendant Grace Lewis Connell obtain this land through the estate of her husband, the father of the defendant Merle C. Adams?

A. No.

Mr. Anderson: That is objected to as immaterial, and not within the issues of this case.

Q. She did obtain it, though, did she not, through the estate of one of her husbands?

A. William Stanton, yes.

Q. Her second husband?

A. Her second husband.

Q. So that the defendant Merle C. Adams would not be an heir of William Lewis?

A. No. Of William Stanton.

Q. I thought you said it was William Lewis that she obtained the land from?

A. William Stanton. Lewis is her third husband.

Cross-examination.

By Mr. Anderson:

Q. How long did you live at Crary, Fred?

A. I lived at Crary between 1886 and 1925; all in that close vicinity.

Q. And since 1925 where have you been?

[fol. 115] A. In Devils Lake.

Q. You have been here in Devils Lake continuously since 1925?

A. I have.

Q. And you havn't been in California at any time since 1925?

A. No.

Q. When was the last time you were in California?

A. 1921.

Q. *Do* you havn't come in personal contact with Merle Adams since 1921?

A. Not with Merle Adams. I have with his mother though.

Q. But Merle Adams?

A. No, I havn't met Merle Adams personally since 1921. I have met his mother, though.

Mr. Anderson: Well, we will move to strike that out on the ground that it is voluntary.

Redirect examination.

By Mr. Traynor:

Q. You have talked with Merle Adams' mother?

A. Yes.

Mr. Anderson: That is objected to as leading.

Q. Here in Devils Lake?

A. In Devils Lake and in Crary.

Q. About when was that?

A. Well, it was—I think it was since I have been at Crary, but I can't remember what year it was. I think it was the year Mr. Smith was sick.

Mr. Morris: In 1927?

A. I think it was in 1927.

Q. And at that time what did she tell you about what Merle was doing?

A. Well, I can't remember the exact conversation, but she said that he was in the real estate business and was living in Wilmington,—that is, that he was working for a real estate office there.

Mr. Traynor: That is all.

A. At one time I think she told me he worked for a while for a bank there. I wouldn't be sure about that.

[fol. 116] Recross-examination.

By Mr. Anderson:

Q. This conversation was in 1927?

A. I think that is the last time I saw her.

Q. And that is about the substance of the conversation you had with her at time, that is, in 1927?

A. Yes.

Q. You said that Mrs. Connell said he was in a real estate office and had worked in a bank?

A. I wouldn't say positively that she said he had worked in a bank, but my recollection was that he had worked in a bank for a short time; but whether she told me that in 1927, I don't remember.

Q. But that was the substance of it?

Mr. Traynor: Plaintiff rests.

Motion to Dismiss

Mr. Anderson: At this time the defendants move to dismiss on all of the grounds and for the reasons set forth in Exhibit "A" and also on the ground and for the reason that there has been a total failure of proof on the part of the plaintiff to show that there has been any fraud, lack of consideration, or that this transaction is fraudulent in any way. They have failed to prove that the defendant

Grace Lewis Connell transferred this property fraudulently or that Merle Adams knew of any fraud when he received the property, and they have failed to make out a prima facie case of any fraudulent transfer of the property. Isn't that your position?

Mr. Traynor: Yes, sir.

Mr. Anderson: Counsel states in open Court that he is not coming in here and attaching this land as Merle Adams' land, but as Grace Connell's land.

Mr. Traynor: Or any interest that Merle Adams might have in the land, it is true. Our position is that this warranty deed is just the same as nothing, and that the land is the land of Grace Lewis Connell.

[fol. 117] The Court: The motion is denied. I will hear your evidence, I guess, too.

Colloquy

Mr. Anderson: Now, if the Court please, all the evidence I have to offer is that certified copy of the adjudication in bankruptcy. It is connected with the motion for a continuance in this case and I think it is on file with the Clerk of Court.

The Court: You do not care to offer any evidence on the merits of the case?

Mr. Anderson: Oh, no, except this one thing that the matter is now pending in bankruptcy.

The Court: You base your whole defense on that?

Mr. Anderson: Yes, sir, I do; and also, in addition to that, what is contained in Exhibit "A."

The Court: That is this written motion you filed?

Mr. Anderson: That is the written motion I filed.

The Court: Your written motion that you filed at the opening of the case?

Mr. Anderson: Yes.

The Court: And what you have just said constitutes your whole case?

Mr. Anderson: Yes, it does.

The Court: You do not care to offer any evidence on the merits of the case at all?

Mr. Anderson: I can't do it because my witnesses are not here and I could not possibly do it now. But you will permit me to take the files—well, it is a part of the files, that certificate——

Mr. Traynor: Yes, I had forgotten there was any, but I remember now there was. You can take whatever there was.

The Court: You had better bring over the files and have the stenographer mark them and offer them in evidence.

Mr. Anderson: (To plaintiff's counsel) You will also concede the referee in bankruptcy has been——

[fol. 118] Mr. Stevens: I had a letter from California just stating that she had filed a petition in bankruptcy and that a certain person had been appointed referee and had given a $100.00 bond. There is nothing to offer in court. So I don't think there could be much property on a $100.00 bond.

Mr. Anderson: Now, that constitutes the defense and I wish to call the Court's attention to the files and records in the bankruptcy proceeding in the United States District Court in California showing these facts that a trustee in bankruptcy——.

Mr. Traynor: I object to this statement. The Court can't take judicial notice of the records and files of a court in California.

Mr. Anderson: Of any court in the United States so long as his attention has been called to it.

The Court: You have asked me to do that and I will see what the law is. Taken subject to objection. It is stipulated that the value of the land in question is of the value of Five Thousand Dollars. Make your record.

Mr. Anderson: Defendants rest.

Mr. Traynor: Plaintiff rests.

The Court: There are two propositions in this case, first: That the defendant Connell has filed a petition in bankruptcy and has been adjudged a bankrupt in the Federal Court of California, and she urges that no proceedings may be had against her in this court on the indebtedness, in that under the Federal Bankruptcy Act such proceedings must be stayed. I have already passed upon that in a separate motion in which I filed a memorandum opinion and order, and I let that ruling stand. That is based on the proposition that no personal judgment is sought against her in this action and no financial burden or legal burden is being tacked onto her because of this action, and the whole object of the action being to determine that she owes this amount of money on this note, and then to have certain

[fol. 119] property which has been attached in this proceeding made subject to the payment of the debt in question. It appears that she has deeded this property long since to another person and that she is not claiming any interest in it at this time. Inasmuch as she is not claiming any interest in the property and it is her position that she has no interest in the property, and her bankrupt estate has no interest in the property, she is not being burdened, nor is her bankrupt estate, and she is not interested in the question which she raises, and I have so held in the other motion.

The second proposition is that this defendant Adams is not the real owner of the property, that he has no rights in it, or at least his rights are inferior to the creditors of Mrs. Connell because it was transferred with the thought of defeating her creditors, particularly this particular creditor, the plaintiff in this action. That proposition you may brief, gentlemen, within the next few days.

Stenographer's Certificate to foregoing transcript omitted in printing.

[File endorsement omitted.]

[fol. 120] [File endorsement omitted]

IN SUPREME COURT OF NORTH DAKOTA

EVA S. WALKER, Plaintiff and Respondent,

vs.

GRACE LEWIS CONNELL and MERLE C. ADAMS and MARY ADAMS, Defendants and Appellants

1. In an action to recover on a promissory note and to set aside a transfer of real property, the record is examined and it is held, for reasons stated in the opinion, that the evidence is sufficient to sustain the trial court's finding that the transfer was without consideration and with the intent to defraud the grantor defendants' creditors and hinder and delay them in the collection of their debts, and that the grantee defendants had knowledge of such facts as to

charge them with notice of the grantor's fraudulent purpose and intent.

2. The provisions of section 67f of the Bankruptcy Act (11 U. S. C. A. 107 (f)), annulling liens obtained through legal proceedings less than four months prior to the adjudication, may be invoked only by the trustee and those claiming under him, where the property involved is nonexempt.

(Syllabus by the Court)

Appeal from the District Court of Ramsey County, Hon. C. W. Butts, Judge. Action to recover on a promissory note. From a judgment for the plaintiff fixing a lien by attachment on the nonexempt real estate of a voluntary bankrupt and setting aside a transfer as fraudulent, the defendants the bankrupt and her grantees appeal.

Affirmed.

Opinion of the Court by Nuessle, Ch. J.

[fol. 121] W. M. Anderson, of Devils Lake, (John A. Jorgenson, of Los Angeles, of counsel), for appellants. Traynor & Traynor, and F. R. Stevens, of Devils Lake, for respondent.

[fol. 122] OPINION—Filed July 17, 1933

NUESSLE, Ch. J.:

The defendants are residents of California. On November 1, 1930, defendant Connell executed her promissory note for $3,500., and interest, payable to the plaintiff Walker one year from the date thereof. This note evidenced a debt of many years standing originally incurred by the defendant Connell to obtain money to protect her title to 520 acres of land in Ramsey County, North Dakota. When the note was executed plaintiff suggested that it be secured by a mortgage on the land in question. Mrs. Connell was reluctant to execute such a mortgage. She said that all the parties had been friends for a good many years; that the plaintiff Walker would get her money so far as the farm could produce it; that she owed no other bills; and that she did not want to mortgage the land if she did not have to. She said, however, that she would consider the matter and talk it over with her son, the defendant Merle C. Adams.

However, nothing was done in the way of giving security. On June 12, 1931, Mrs. Connell deeded the land to the defendants Merle C. Adams and Mary Adams, his wife, for a stated consideration of $10. It is stipulated in the record that the land is worth $5,000. The note in question was not paid. On December 1st plaintiff began this action in Ramsey County to recover on it and the land was attached.

In her complaint in this action plaintiff set out the fact of the execution and delivery of the note and its nonpayment; that she was the owner thereof; that the defendant Connell owned the land in Ramsey County which was later attached; that the indebtedness covered by the note represented money loaned to defendant Connell for the purpose of discharging mortgages thereon; that on June 12, 1931, the defendant Connell fraudulently and without consideration and with intent to cheat and defraud her creditors and to hinder and delay them in the collection of their debts, deeded the said land to the defendants Adams; that the defendants Adams accepted and received the said deed with the knowledge of the fraudulent intent and purpose of the [fol. 123] defendant Connell; that the defendant Connell had no other land or property within the state of North Dakota or elsewhere and that such transfer rendered her wholly insolvent. And the plaintiff demanded judgment against the defendant Connell for the amount of the note with interest and costs, and against all of the defendants that the transfer of the said land from the defendant Connell to the defendants Adams be set aside and declared null and void, and that the plaintiff have a first and prior lien on and to the said premises in the amount of said indebtedness by virtue of any attachment that might issue. Plaintiff thereupon procured the issuance of a writ of attachment on the ground that the defendants were nonresidents, and the land was duly attached.

Service was had upon the several defendants and on December 28, 1931, they served their joint answer upon the plaintiff, verified by the defendant Connell, wherein they admitted all of the allegations set out and contained in the plaintiff's complaint, excepting only that they denied that the transfer of the land in question was made with any intent to cheat or defraud any creditor of the defendant Connell or to hinder or delay any creditor in the collection of any debt, and denied that said transaction was con-

ducted fraudulently. In that behalf they alleged that said transaction and conveyance were in good faith and for value. They admitted that the defendant Connell had no other land or property within the state of North Dakota or elsewhere out of which the plaintiff could realize on her claim, but denied that the transfer thereof rendered the defendant Connell insolvent. On the 29th of February, 1932, the defendants served their joint amended answer, wherein they reiterated the allegations and denials of their original answer, and further alleged that on the 24th of February, 1931, the defendant Connell filed her voluntary petition in bankruptcy in the District Court of the United States for the Southern District of California, accompanied by duly verified schedules setting out and containing true and correct statements of her debts and the names and residences of her creditors and accurate inventories of [fol. 124] all of her property, together with such further statements as were required by the provisions of the Bankruptcy Act; and that on said date she was duly adjudicated a bankrupt; and the defendants demanded that the action either be dismissed or that all proceedings therein be stayed until the final disposition of the bankruptcy proceedings.

Thereafter on the 7th day of March, 1932, the defendants moved that all proceedings in the action be stayed until the final disposition of the bankruptcy proceeding in the United States District Court. This motion was predicated upon the verified amended answer of the defendants and the affidavit of their counsel setting forth substantially the same matters and things as were set out and contained in the answer. Plaintiff resisted this motion and it was denied.

The case came to trial on the issues as made by these pleadings. The plaintiff offered evidence in support of her complaint. The defendants appeared by counsel and objected to the jurisdiction of the court to hear and determine the question on the grounds that the defendant Connell had been adjudicated a bankrupt and that the bankruptcy proceeding was still pending; that such adjudication in bankruptcy had been within less than four months after the date of the attachment; that therefore the attachment had become and was ineffective and null and void; and that accordingly though the transfer was fraudulent, nevertheless the plaintiff was in no position to challenge the same

or to maintain her action to set it aside. This objection being overruled counsel for the defendants participated in the trial and cross-examined witnesses, but offered no evidence in defendants' behalf other than by requesting the court to take judicial notice of the bankruptcy proceeding and the files and records therein. Counsel, however, offered no copies thereof other than a copy of the adjudication and order of reference.

The trial judge after considering the evidence offered adhered to his ruling on the challenge to the jurisdiction of the court and to the validity of the lien of the attachment. With respect to the lien of the attachment he held that the provisions of section 67f of the Bankruptcy Act could be [fol. 125] invoked only by the trustee of the bankrupt of those claiming under him. On the evidence the court found that the transfer of the land in question was without consideration and with the intent to defraud the grantor's creditors and hinder and delay them in the collection of their debts; that the defendants Adams had knowledge of such facts as to charge them with notice of the fraud and that accordingly the transfer was null and void as against the attaching creditor. Accordingly the trial court ordered judgment that the transfer be set aside; that the plaintiff be held to have a valid lien on and against the land by virtue of the attachment and that her claim be satisfied out of the land, so far as it was possible to do so, and that she have no general personal judgment as against the defendant Connell. Thereupon the defendant perfected the instant appeal.

We will first consider the defendants' contention that, in any event, the evidence is insufficient to sustain the trial court's finding and holding that the transfer was fraudulent as to the plaintiff and that the defendants Adams were chargeable with notice of the fraud. We have examined the record with this contention in mind. We are of the opinion that the evidence amply sustains the trial court in these respects. The debt evidenced by the note in question was of long standing. Concededly the note was past due and unpaid. When it was executed the plaintiff asked for security on the land. Mrs. Connell evaded giving such security but agreed to talk the matter over with her son, the defendant Adams. She said she had no other indebtedness and that this obligation would be paid out of the land. Notwith-

standing this assurance she deeded the land to her son and her son's wife by warranty deed. She had no other property in this state or elsewhere. Thus she rendered herself insolvent. It is stipulated that the land thus transferred was worth $5,000.00. The consideration recited in the deed is $10. Presumptively the consideration thus expressed is that which was given for the transfer. 18 C. J. 265. The defendants offered no evidence whatsoever other [fol. 126] than proof of Mrs. Connell's adjudication as a bankrupt. The facts above stated when considered together with the circumstance that after the instant action was begun the defendant Connell became a voluntary bankrupt, amply sustains the conclusions of the trial court. While there is no direct evidence that the defendants Adams were parties to or had actual knowledge of the fraud on the part of Mrs. Connell, nevertheless the circumstances are such that they must be charged with notice thereof, and actual fraudulent participation on their part was not essential to a holding that the transfer was invalid as to them. See Holden v. Walker, — N. D. —, 245 N. W. 318.

The defendants Adams insist that the attachment was ineffectual for the reason that no cause of action is stated in the complaint against them on account of which an attachment may issue. Even so, this avails them nothing. If the attachment was effective as against Mrs. Connell, thereby the court acquired jurisdiction so far as Mrs. Connell's interest in the land was concerned. The defendants Adams appeared and answered. Thus they submitted themselves to the jurisdiction of the court and the action having been tried on its merits and the validity of the transfer having been determined, they are bound by the judgment.

But it is further insisted that under section 67f of the Bankruptcy Act (11 U. S. C. A., section 107 (f)), the lien of the attachment was annulled and discharged when Mrs. Connell was adjudicated a bankrupt within four months after the date of the attachment. If this is so and the attachment was thereby stricken down, then the plaintiff was merely a general contract creditor and not in a position to attack the transfer as fraudulent. See 27 C. J. 474 and 727, et seq., and notes. See, also, Union National Bank v. Oium, 3 N. D. 193, 54 N. W. 1034, 44 A. S. R. 533. Section 67f of the Bankruptcy Act provides:

"Levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from [fol. 127] the same, and shall pass to the trustee as a part of the estate of the bankrupt."

It must be remembered, however, in considering the effect of this statute here, that the attack on the attachment lien is not made by the trustee in bankruptcy—and so far as the record is concerned there is only the presumption that a trustee was appointed—but by Mrs. Connell and her fraudulent grantees. The property attached was not exempt so no question arises as to whether under this section liens on property exempt to the debtor are annulled by an adjudication. But see Ellis v. Fiske, 60 N. D. 142, 232 N. W. 891, 71 A. L. R. 501, and cases cited therein. See, also, Chicago B. & Q. Railway Company v. Hall, 229 U. S. 511, 57 L. ed. 1306, 33 Sup. Ct. 885. Mrs. Connell stands in this position: She concededly owes the amount of the plaintiff's note and interest. She stated to the plaintiff when she executed the note and plaintiff demanded security, that she owed no other debts. She owned the land subsequently attached by the plaintiff. Without consideration and with intent to defraud the plaintiff she transferred this land to her son and daughter-in-law. When the good faith of this transfer was challenged by the plaintiff in the instant action, she became a voluntary bankrupt. Yet, in her original answer, interposed just prior to the adjudication in bankruptcy, and which she positively verified, she alleged that though she had no other property she was not rendered insolvent by the transfer and was not insolvent at the time of making the answer. While there is a division of authority on the question, it seems to us that the more just rule to apply in such case is that the provisions of section 67f of the Bankruptcy Act with respect to liens obtained prior to an adjudication through legal proceedings on non-exempt property, can be invoked only by the trustee of the bankrupt or those claiming under him. And the logic of the following cases is to this effect. See Neugent Garment Company v. U. S. Fidelity & Guaranty Company, — Wis.

—, 231 N. W. 600, — Wis. —, 230 N. W. 69; Martin v. Green Lake State Bank et al., — Minn. —, 208 N. W. 21; Swaney v. Hasara, 164 Minn. 416, 205 N. W. 274; Miller v. [fol. 128] Barto, 247 Ill. 104, 93 N. E. 140; Rochester Lumber Company v. Locke, 72 N. H. 22, 54 Atl. 705. See, also, 7 C. J. 197, and cases cited. Such a construction of the statute is wholly consistent with both the holding and the reasoning of Chicago B. & Q. Railway Company v. Hall, supra, cited by the defendants, wherein the court, holding that under section 67f all liens obtained by legal proceedings within four months of filing the petition are annulled "both as against the property which the trustee takes and that which may be set aside to the bankrupt as exempt," said: "This view, we think, is supported both by the language of the section and the general policy of the act, which was intended not only to secure equality among creditors, but for the benefit of the debtor in discharging him from his liabilities and enabling him to start afresh with the property set apart to him as exempt. Both of these objects will be defeated of judgments like this present were not annulled, for otherwise the two Iowa plaintiffs would not only obtain a preference over other creditors, but would obtain property which it was the purpose of the bankruptcy act to secure to the debtor." It may well be, though we are not called upon to pass upon the question and do not do so, that where, as in the instant case, a creditor successfully challenges the transfer of a bankrupt's property by suit to set it aside, the fruits of his suit can be claimed by the trustee for the benefit of all creditors. But so far as the instant case is concerned it does not appear that there are any other creditors than the plaintiff. And if there be, the question of the right of the plaintiff to retain and enjoy the fruits of the litigation must be determined as between the plaintiff and the trustee. Whatever right or interest Mrs. Connell had in the property became by the adjudication in bankruptcy vested in the trustee. The property was nonexempt. Thereafter she had no further interest in it. She cannot complain because the transfer is set aside and the attaching creditor thus enabled to satisfy his claim out of the property. She is no better than any other stranger and cannot vindicate the rights of the trustee or the other creditors. So far as she is concerned the lien of the attachment is just as effective as though it had been

[fol. 129] fixed more than four months prior to her adjudication. So far as the defendants Adams are concerned, they can have no complaint. They are not among those whom the Bankruptcy Act was intended to benefit. They are not in a position to object if by reason of the attachment and the judgment in this action the plaintiff enjoys a preference as against other creditors. They paid no consideration for the property and were charged with notice of the fraud incident to its transfer. Their contentions were rightly determined against them in the trial court.

Considered in the above light the denial of the defendants' motion for a stay of the action because of the pending bankruptcy proceeding was properly denied and the objections predicated upon that ground were likewise correctly overruled. The instant action was begun prior to the filing of the defendants' petition in bankruptcy. Neither the trustee nor anyone claiming under him offered any objection against the trial court's retaining jurisdiction and determining the matters in issue. So far as the defendants were concerned it seems to us that the case must be ruled the same as it would be if the action had been begun and the lien of the attachment had become fixed more than four months prior to the adjudication. In such case the state court has jurisdiction to finally dispose of the litigation. See Straton v. New, 283 U. S. 318, 75 L. ed. 1060, and note; Simons v. Wells, Receiver, C. C. A. 9, No. 6980, June 5, 1933. See, also Isaacs v. Hobbs Tie & Timber Company, 282 U. S. 734, 75 L. ed. 645, and note. Because of the pendency of the bankruptcy proceeding no general personal judgment was ordered against the defendant Mrs. Connell. The court merely held that the lien of the attachment was valid and effective as against Mrs. Connell to the same extent that it would have been had it been fixed more than four months prior to her adjudication in bankruptcy, and that plaintiff's claim by reason and to the extent of such lien should be satisfied out of the property.

The judgment is affirmed.

W. L. Nuessle, John Burke, L. E. Birdzell, A. M. Christianson, A. G. Burr.

[fol. 130] IN SUPREME COURT OF NORTH DAKOTA

File No. 6124

Appeal from the District Court of Ramsey County

EVA S. WALKER, Plaintiff and Respondent,

vs.

GRACE LEWIS CONNELL and MERLE C. ADAMS and MARY ADAMS, Defendants and Appellants

JUDGMENT—Filed July 17, 1933

This action coming on to be heard at the December A. D. 1932 term of this Court at the Supreme Court rooms in the City of Bismarck, State of North Dakota:

Present: A. M. Christianson, Chief Justice; L. E. Birdzell, W. L. Nuessle, John Burke and A. G. Burr, Associate Justices, and the appeal herein having been submitted by W. M. Anderson and John A. Jorgenson for the Appellants and by Traynor & Traynor and F. R. Stevens for Respondent and the court having advised thereon it is now considered, ordered and adjudged that the judgment of the said District Court within and for said Ramsey County appealed from herein, be and the same is hereby affirmed.

And it is further ordered, That this cause be and it is hereby remanded to the District Court for further proceedings according to law, and the order of this court.

And it is further considered and adjudged, That Respondent have and recover of the Appellants costs and disbursements on this appeal expended, to be taxed and allowed in the District Court.

Dated July 17th, 1933.

By the Court:

W. L. Nuessle, Now Chief Justice.

Attest:

J. H. Newton, Clerk. (Seal.)

[File endorsement omitted.]

[fol. 131] IN SUPREME COURT OF NORTH DAKOTA

6124

Register of Actions

Parties

EVA S. WALKER, Plaintiff and Respondent,

versus

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS, Defendants and Appellants

Name of Court: Ramsey

Attorneys:

F. R. Stevens, Traynor & Traynor.
John A. Jorgenson, Wm. M. Anderson.

Month, day, year	Entries	Appellant's costs	Receipt No.
Nov. 19, 1932.	Docket, Indexing, Etc., Appeal & 3 Transcripts	$10.00	3563
" " "	Filed 7 Appellant's Briefs		Pd. $10.00
" " "	Filed 7 Respondent's Briefs.		
Dec. 10, 1932.	Submitted.		
July 17, 1933.	Filed Order of Affirmance.		
" " "	Filed Opinion.		
Aug. 1, 1933.	Filed 7 Applications for Stay of Remittitur.		
" " "	Filed 1 Praecipe for Transcript.		
" " "	Minute Order granting Application for Stay.		

[fol. 132] IN SUPREME COURT OF NORTH DAKOTA

[Title omitted]

ORDER GRANTING APPLICATION FOR STAY OF REMITTITUR—Aug. 1, 1933

Attorneys for appellants above named having filed with court their application for a stay of the remittitur herein for the purpose of having prepared a transcript for presentation to the Supreme Court of the United States on application for writ of certiorari, it is

Ordered: that the said application be and the same is hereby granted.

Now court adjourned until August 8, 1933, at 10 a. m.

J. H. Newton, Clerk.

[fol. 133] [File endorsement omitted.]

[fol. 134] IN SUPREME COURT OF NORTH DAKOTA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—Filed Aug. 1, 1933

To the Clerk of the Supreme Court of the State of North Dakota:

The clerk will please prepare a complete transcript of the record of this case in the Supreme Court of North Dakota, to be used on application for certiorai to the Supreme Court of the United States in the above entitled cause, including therein:

1. The complete record transmitted to the Supreme Court of North Dakota from the District Court of Ramsey County, in said state, including exhibits and transcript of the evidence.

2. Docket and minute entries of all proceedings had in connection with this cause in the Supreme Court of the State of North Dakota.

3. Opinion of the Supreme Court of the State of North Dakota.

4. The final judgment, order or decree of the Supreme Court of the State of North Dakota.
5. This præcipe with proof of service.
6. Clerk's certificate.

W. M. Anderson, John A. Jorgenson, Attorneys for Appellants.

[fol. 135] STATE OF CALIFORNIA,
County of Los Angeles, ss:

John A. Jorgenson, being first duly sworn, deposes and says: that he is a citizen of the United States, over the age of twenty-one years and not a party to the within entitled action; that he is attorney for defendants and appellants in the within action and that he has his office in the City of Los Angeles, State of California; that Messrs. Stevens and Traynor are attorneys for Plaintiff and Respondent in said action; that said Messrs. Stevens and Traynor have their office in Devils Lake, North Dakota; that on Thursday, July 27th, 1933, deponent served a true copy of the within Præcipe for Transcript on said Stevens and Traynor by enclosing in an envelope a copy thereof addressed as follows:

Messrs. Stevens and Traynor, Devils Lake, North Dakota, postage prepaid, and depositing the same in the United States Post Office at Los Angeles, California, on said date.

John A. Jorgenson.

Subscribed and sworn to before me this 27th day of July, 1933. Nellie C. Dawson, Notary Public, in and for the County of Los Angeles, State of California. My Commission Expires April 30, 1936. (Seal of Nellie C. Dawson, Notary Public, Los Angeles, Co., Cal.)

[fol. 136] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 137] IN SUPREME COURT OF THE UNITED STATES

STIPULATED FOR OMISSIONS IN PRINTED TRANSCRIPT—Filed Sept. 22, 1933

It is hereby stipulated and agreed that the Clerk of the United States Supreme Court may omit from the printed transcript of the record herein the following:

(1) The "Sheriff's Notice of Levy" appearing on page 19 of certified transcript, and "sheriff's Notice of Levy" appearing on page 84, except as to filing marks, and in lieu thereof insert, in each instance: "Sheriff's Notice of Levy omitted by stipulation because appearing herein again as part of respondent's Exhibit No. 3."

(3) The "Warrant of Attachment" appearing on pages 20 and 21 of certified transcript, and again at pages 85 and 86, except as to filing marks, and in lieu thereof insert: "Warrant of Attachment omitted by stipulation because appearing herein again as part of respondent's Exhibit No. 3."

(4) The "Judgment and Decree" appearing on pages 63, 64, 65, 66 and 67, and in lieu thereof insert: "Copy of Judgment and Decree attached to Special Execution omitted by stipulation because already appearing herein, supra."

[fol. 138] (5) "Warranty Deed" appearing on pages 81, 82, and 83 of the certified transcript, and in lieu thereof insert: "Warranty Deed omitted by stipulation because appearing herein again subsequently as respondent's Exhibit 2."

It is further stipulated and agreed that this stipulation may be incorporated in the printed transcript.

Dated September 6, 1933.

John Jorgensen, Counsel for Petitioners. Traynor & Traynor, & F. R. Stevens, Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 20, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of North Dakota is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4280)

INDEX

	Page
Petition	1
Statement of Matter Involved	1
Question Presented	7
Reasons for Granting the Writ	8
Brief in Support of Petition	13
Opinion Below	13
Jurisdiction	13
Statement of the Case	13
Statute Involved	13
Assignment of Error	14
The Argument	14
The decision of the court below that the lien under Sec. 67 (f) of the Bankruptcy Act is avoided only as to the trustee is in conflict with the express provisions of the Bankruptcy Act and decisions of this court	14
The North Dakota courts should at least have stayed all their own actions until termination of the Bankruptcy proceedings	19
Conclusion	24

TABLE OF CITATIONS

Cases:	Page
Acme v. Beckman, 222 U. S. 300, 56 L. ed, 208, 32 S. Ct. 96	20
Alexander v. Wilson, 144 Cal. 5, 77 P 706	11

Page

Anderson v. Billingsly, 46 SD 17, 189 NW 986 9
Archenhold v. Schaefer, Tex. CA 205 SW 139 9
Armour v. Wynn, 119 Ga. 683, 46 SE 865 11
Bank v. Stanke, 202 U. S. 141, 26 S. Ct. 580, 20 L. ed. 967 11
Beals, In re, 116 Fed. 530 11
Cadwallader v. Dulac, 128 Me. 519, 149 A 142 9
Cavanaugh v. Fenley, 94 Minn. 505, 103 NW 711, 110 ASR 382 11
Chicago, B. & Q. R'y vs. Hall, 229 U. S. 511, 57 L. ed. 1306, 33 S. Ct. 885 ..... 8, 15
City Bank of New Orleans, In re, 3 How. 292, 11 L. ed. 603 22
Clarke v. Larremore, 188 U. S. 486, 23 S. Ct. 363, 47 L. ed. 555 11
Clay v. Waters, 178 Fed. 385, 101 CCA 645, 21 Ann. Cas. 897 20
Clement v. King, 152 NC 456, 67 SE 1023 10
Cohen v. Utter, 152 Ga. 157, 108 SE 538 10
Dayton v. Stanard, 241 U. S. 588, 36 S. Ct. 695, 60 L. ed. 1190 21
Dillard, In re, 2 Hughes 190, 7 Fed. Cas. 703 18
Donahue v. Kohler, 81 Colo. 244, 254 P 989 8
Duke v. Low, 135 Ore. 460, 196 P 45 9
Equitable v. Miller, 164 Ga. 49, 137 SE 771, 36 Ga. A. 746, 138 SE 282, 35 Ga. A. 184 10
Forbes, In re, 26 Am. Bankr. Rep. 285, 186 Fed. 79, 108 CCA 191 18

Page

Frazee v. Nelson, 179 Mass. 456, 61 NE 40 9
Galbraith v. Robson, CCA, 216 F. 842 21
Glenny v. Langdon, 98 US 20, 25 L. ed. 43 ..... 18, 23
Greenberger v. Schwartz, 261 Pa. 265, 104 A 573 9
Gross v. Irving, 53 S. Ct. 605 24
Hall v. Chicago, 88 Neb. 20, 128 NW 645 11
Harkin v. Brundage, 276 US 36, 48 S. Ct. 268, 72 L. ed. 457 21
Hobbs v. Thompson, 160 Ala. 360, 49 So. 787, 18 Ann. Cas. 381 11
Houston v. City Bank, 6 How. 486, 12 L. ed. 526 22
Hutchins v. Canters, Tex. CA, 66 SW 138 9
Isaacs v. Hobbs, 282, U. S. 734, 51 S. Ct. 270 ..... 16, 20
Janes v. Beach, 1 Mich. N. P. 94 ..... 11, 22
Kellogg v. Schmidt, 101 Ill. A. 209 11
Klipstein v. Allen, 136 Fed. 385, 69 CCa 229 11
Kobrin v. Drazin, 77 NJCh 400, 128 A 796 8
Krueger, In re, D. C., 27 Am. Bankr. Rep. 440, 196 Fed. 705 18
Lamorelle v. Nass, 30 Pa. Super. 190 9
Lazarus v. Prentice, 234 US 263, 34 S. Ct. 851, 58 L. ed. 1305 20
McKenney v. Cheney, 118 Ga. 387, 45 SE 433 10
Martin v. Green, 166 Minn. 405, 208 NW 21 ..... 8, 11
Miller v. Barto, 247 Ill. 104, 93 NE 140 10
Moyer v. Dewey, 103 U. S. 301, 26 L. ed. 394 23
Mueller v. Nugent, 184 US 1, 22 S. Ct. 269, 46 L. ed. 405 20

Page

Murphy v. John Hofman, 211 U. S. 562, 29 S. Ct. 154, 53 L. ed. 327 21
Neugent v. United, 202 Wis. 93, 231 NW 600 9
New Orleans v. Griscom, 79 Miss. 662, 31 So. 336 9
Nisbet v. Federal, CCA, 229 F. 644 22
People v. Maxson, 168 Iowa 318, 150 NW 801 ..... 9, 16
Powers v. Nelson, 10 ND 580, 88 NW 705 10
Ray v. Norseworthy, 23 Wall. 128, 23 L. ed. 116 22
Republic v. Foster, 95 Conn. 551, 111 A 839 9
Robertson v. Howard, 229 US 254, 33 S. Ct. 854, 57 L. ed. 1174 21
Rochester v. Locke, 72 NH 22, 54 A 705 ..... 10, 15
Ruhl v. Gillespie, W. Va., 56 SE 898, 10 LRA NS 305 ..... 22, 35
Sessions v. Romadka, 145 US 29, 12 S. Ct. 799, 36 L. ed. 609 18
Smith v. First, 76 Colo. 34, 227 P 826 8
Sparhawk v. Yerkes, 142 U. S. 1, 12 S. Ct. 104, 35 L. ed. 915 18
Stern v. Bradner, 225 Ill. 430, 80 NE 307 22
Swaney v. Hasara, 164 Minn. 416, 205 NW 274 ..... 8, 11
Taylor v. Buser, 167 NYS 887 10
Taylor v. Irwin, C. C., 20 F. 615 18
Thompson v. Ragan, 117 Ky. 577, 78 SW 485 11
Tune, In re, D. C., 8 Am. Bankr. Rep. 285, 115 F. 906 18
Trimble v. Woodhead, 102 U. S. 647, 26 L. ed. 290 23
Union Nat'l v. Oium, 3 ND 193, 54 NW 1034 6

Wabash v. Adelbert, 208 US 38, 28 S. Ct. 182, 52 L. ed. 379 21
Wade v. Bank, 216 Ala. 539, 113 So. 617 10
Wells, In re, 105 F. 762 10
Wells v. Sharp, CCA, 208 F. 393 21
White v. Schloerb, 178 US 542, 20 S. Ct. 1007, 44 L. ed. 1183 ..... 11, 21
Wilka, In re, D. C., 131 F. 1004 21
Wise v. Lead, 123 Mo. A. 249, 100 SW 680 11
Wood v. Carr, 115 Ky. 303, 73 SW 762 11
Woodruff v. Cheeves, 105 F. 601, 44 CCA 631 10
Wright v. Sanders, 142 Mo. A. 50, 125 SW 517 ..... 11, 24

Statutes:

Bankruptcy Act: Secs. 67f and 70 (a) and 70 (e) 13, 22, 23
Bankruptcy Act of July 1, 1898, c. 541, Sec. 67, 30 Stat. 564 as amended Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; June 25, 1910, c. 412, Sec. 12, 36 Stat. 842 13
Bankruptcy Act: of July 1, 1898, c. 541, Sec. 70, 30 Stat. 565; Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; May 27, 1926, c. 406, Sec. 16, 44 Stat. 667; USCA Title 11, Sec. 110 23
Judicial Code, Sec. 237 (b) as amended by the Act of Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 937; USCA, Title 28, Sec. 344 (b) 13

In the Supreme Court

OF THE

United States

October Term, 1933

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS,
Petitioners,

vs.

EVA S. WALKER,
Respondent.

No.....

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH DAKOTA AND BRIEF IN SUPPORT THEREOF.

PETITION

The petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of North Dakota entered on July 17th, 1933, affirming the decision of the District Court of Ramsey County, North Dakota, Second Judicial District.

STATEMENT OF MATTER INVOLVED

This case reached the Supreme Court of the State of North Dakota, on appeal from a judgment of the Dis-

trict Court of Ramsey County in that state entered June 25, 1932.

Respondent commenced the action against petitioners in that county on December 1st, 1931. All parties were then, and now are, residents of Los Angeles County, California. On the same day the action was filed, an attachment was issued out of said court and 520 acres of land situated in that county were levied upon *as if* the property of petitioner Connell. The complaint set forth as its first cause of action a promissory note for $3500 executed and delivered by petitioner Connell to respondent, dated Nov. 1, 1930, and unpaid. A second cause of action set forth that for many years petitioner Connell had been the owner of the land attached; that on or about June 12th, 1931, while so indebted to respondent, said petitioner had made a conveyance, or purported conveyance, of the same to petitioners Adams for a stated consideration of $10.00; that such conveyance had been actually recorded in the office of the Register of Deeds of that county on July 10, 1931, but that it did not contain, as required by the recording acts of North Dakota (Chap. 249, Session Laws 1929) the postoffice address of the grantees; and that such conveyance had been made without consideration and with intent to hinder, delay, and defraud the creditors of the grantor. (See Complaint: R. p.....) It was specifically alleged "that such transfer of said real estate has rendered the said defendant Grace Lewis Connell wholly insolvent." (R. p. ....., lines.....) Respondent asked for judgment against said Connell for

the amount due on said note, for cancellation of the record of said conveyance; for nullification of the transfer as a fraud on creditors; and for appropriation of the property as that of petitioner Connell, to the satisfaction of respondent's claim.

On February 24, 1932 (and, therefore, within four months of the commencement of the action and levy of the attachment), petitioner Connell was adjudged a bankrupt in the United States District Court at Los Angeles, California. A few days thereafter, petitioners served and filed in said action a joint answer admitting the indebtedness (first cause of action), denying the fraud in the transfer, and setting out a separate and further defense as follows:

"1. Allege that on the 24th day of February, 1932, at Los Angeles, California, the defendant Grace Lewis Connell filed in the District Court of the United States for the Southern District of California, Central Division, her petition alleging that she was by occupation a housewife, and had resided and had her domicile and principal place of business for the greater portion of six months next immediately preceding the filing of said petition, at Los Angeles, California, within said judicial district; that she owed debts which she was unable to pay in full; that she was willing to surrender all her property for the benefit of her creditors except such as was exempt by law, and desired to obtain the benefit of the Act of Congress relating to bankruptcy. She accompanied said petition with a schedule marked "A", and verified by her oath, containing a full and

true statement of all debts and (so far as it was possible to ascertain) the names and places of residence of her creditors, and such further statements concerning said debts as were required by the provisions of said Act; that she also accompanied said petition by a schedule marked "B" and verified by her oath, containing an accurate inventory of all her property, both real and personal, and such further statements concerning said property as were required by the provisions of said Act; and she prayed in said petition that she be adjudged by the Court, bankrupt within the purview of said Act.

"II. That said defendant Grace Lewis Connell has been for several years, and now is a resident, and has had her domicile and principal place of business, and now has the same in the City of Los Angeles in the Southern District of California, Central Division, of the United States District Court; that in said schedules the claim of plaintiff herein is set forth as one of her debts, and there is listed her equity and interest in all the real estate described in the complaint herein.

"III. That on the 24th day of February, 1932, in said proceedings the defendant Grace Lewis Connell was adjudged a bankrupt by the United States District Court of the Southern District of California, Central Division.

"IV. That the attachment in this action was levied on or about December 1, 1931, and therefore within four months of the filing of said petition in bankruptcy.

"WHEREFORE defendants pray that this action

be either dismissed or that all proceedings herein be stayed until the final disposition of said bankruptcy proceedings." (R. p. ....., line ....., to p. ....., line .....)

About the same time, respondent caused said action to be placed upon the trial calendar for a term of court convening in that county March 7, 1932, and petitioners, with their said answer, served a notice (R. p. .....) that at the opening of said term of court, they would move for a stay of all proceedings until termination of the bankruptcy matter, and that said motion would be based upon the answer aforesaid verified by petitioner Connell, an affidavit of John A. Jorgenson attached thereto setting out the proceedings in bankruptcy (R. p. .....), and an exemplified copy of the adjudication in bankruptcy. (R. p. .....) The motion was duly submitted to the court upon the complaint, verified first amended answer, Jorgenson affidavit, and exemplified copy of adjudication in bankruptcy, and on April 2, 1932, denied. (R. p. .....)

Thereafter, the case came on regularly for trial. No further evidence of what was transpiring in the bankruptcy proceedings was offered by any party, Petitioners continued to object to further action in the state court because of the pendency of the bankruptcy proceedings. (R. p. .....) Petitioners particularly insisted that the attachment be dissolved and that the second cause of action be dismissed because the attachment lien had been nullified by the bankruptcy, and under the law in North Dakota, no mere general creditor was entitled to set aside an alleged fraudulent transfer, but

such creditor must have a lien. (Union Nat'l Bank v. Oium, 3 N. D. 193, 54 NW 1034, 44 ASR 533; approved in opinion sought to be reviewed: R. p. .....) Petitioners offered no evidence except the adjudication in bankruptcy, relying solely upon the legal questions thus presented. (R. p. .....) Respondent offered evidence upon all the allegations of the complaint, and also, the attachment proceedings. (Which were not set forth in the complaint.)

Thereupon the court made its findings of fact (R. p. .....), conclusions of law (R. p. .....), and judgment (R. p. .....) in favor of the respondent. These gave respondent the following relief: (1) Judgment in rem for the amount due on the promissory note against petitioner Connell; (2) cancelled the record of the deed as contrary to the recording acts of North Dakota; (3) set aside the conveyance from Connell to the Adamses as fraudulent and void, and decreed the property to be that of petitioner Connell.

The trial court expressly found as a fact (R. p. .....):

"XI. That the said defendant, Grace Lewis Connell, has no other land or property within this state out of which the plaintiff can realize on her claim herein, and has no land or property in any other state, and that such transfer of said real estate (June 12, 1931) has rendered the said defendant, Grace Lewis Connell, *wholly insolvent.*"

The trial court also expressly decreed:

"V. (R. p. ——, etc.) that the said premises, or so much thereof as may be necessary, be sold by the sheriff

of Ramsey County, North Dakota, to satisfy the amount due plaintiff by virtue of this judgment, and that the defendants and each and all of them, *and all persons claiming under them or thru them or either or any of them subsequent to the commencement of this action,* be and they are forever barred and foreclosed of any and all right, claim, lien, interest or equity in and to said premises or any part thereof, save only the right of redemption as provided by law, and that the right, claim, title, interest or encumbrance of said defendants or either or any of them, if any, in and to said premises, is subsequent to and subject to plaintiff's said lien (attachment) herein."

This judgment, and all rulings of the trial court throughout the proceedings, the Supreme Court of North Dakota has affirmed, except possibly, the italicized portion of the judgment, *supra.* The opinion of the North Dakota Supreme Court, though not perhaps expressly saying so (and not necessarily required to), indicates that the trustee in bankruptcy and those claiming under him may assert the nullity of the attachment under Sec. 67f of the Bankruptcy Act.

QUESTION PRESENTED

Does Section 67f of the Bankruptcy Act nullify liens obtained on non-exempt property through legal proceedings, while the debtor was insolvent and within four months of bankruptcy, against all the world or merely against the trustee in bankruptcy (and those claiming under him)? In other words, may the bank-

rupt, or alleged fraudulent transferee of the bankrupt's property, assert such invalidity?

REASONS FOR GRANTING THE WRIT

Petitioners claim that the decision of the Supreme Court of North Dakota is contrary to the rulings in Chicago B. & Q. Railway Company vs. Hall, 229 U. S. 511, 57 L. ed. 1306, 33 Sup. Ct. 885 (decided June 9, 1913, holding liens obtained thru legal proceedings against the bankrupt within four months of bankruptcy void against all the world) and other cases hereafter cited.

However, the highest courts in various states handing down decisions since Chicago vs. Hall, *supra,* are in disagreement as to the construction and application of that case. Petitioners presented that decision in vain to the Supreme Court of North Dakota and that court is supported by the following decisions rendered subsequent to Chicago vs. Hall, *supra:*

Smith v. First, 76 Colo. 34, 227 P 826, decided July 7, 1924;

Kobrin v. Drazin, 77 NJ Ch 400, 128 A 796, decided May 7, 1925;

Swaney v. Hasara, 164 Minn. 416, 205 NW 274, decided Oct. 9, 1925;

Martin v. Green, 166 Minn. 405, 208 NW 21, decided Mar. 19, 1926;

Donahue v. Kohler, 81 Colo. 244, 254 P 989, decided Apr. 4, 1927;

Cadwallader v. Dulac, 128 Mc. 519, 149 A 142, decided Feb. 21, 1930;

Neugent v. United, 202 Wis. 93, 231 NW 600, decided June 23, 1930.

But, the highest courts in other states in decisions subsequent to the Hall case, support the claims of petitioners:

People's v. Maxson, 168 Iowa 318, 150 NW 601, decided Jan. 12, 1915;

Greenberger v. Schwartz, 261 Pa. 265, 104 A 573, decided May 8, 1918;

Duke v. Low, 135 Ore. 460, 196 P 45, decided Mar. 3, 1931;

Anderson v. Billingsly, 46 SD 17, 189 NW 986, decided Sept. 29, 1922;

Republic v. Foster, 95 Conn. 551, 111 A 839, decided Dec. 22, 1920;

Archenhold v. Schaefer, Tex. CA, 205 SW 139, decided June 19, 1918.

The following cases decided *prior* to Chicago v. Hall, *supra,* and, therefore, overruled, we think (as appears more fully in the accompanying brief), support the Supreme Court of North Dakota:

Frazee v. Nelson, 179 Mass. 456, 61 NE 40, decided Sept. 4, 1901;

Hutchins v. Canters (Tex. C. A.), 66 SW 138, decided Jan. 8, 1902;

New Orleans v. Griscom, 79 Miss. 662, 31 So. 336, decided Feb. 10, 1902;

Lamorelle v. Nass, 30 Pa. Super. 190, decided Mar. 12, 1906;

Rochester v. Locke, 72 NH 22, 54 A 705, decided Mar. 12, 1906;

Clement v. King, 152 NC 456, 67 SE 1023, decided May 4, 1910;

Miller v. Barto, 247 Ill. 104, 93 NE 140, decided Oct. 28, 1910.

And the following cases (some since the Hall case) though merely dictum, affirm the principle:

McKenney v. Cheney, 118 Ga. 387, 45 SE 433, decided Aug. 12, 1903, (involving exempt property where homestead waived by contract, but asserting lien obtained through legal proceedings void only against trustee, citing: Powers v. Nelson, 10 N. D. 580, 88 NW 705; Woodruff v. Cheeves, 105 Fed. 601, 44 CCA 631; In re Wells, 105 Fed. 762);

Equitable v. Miller, 164 Ga. 49, 137 SE 771, decided Apr. 12, 1927, and same case on higher appeal, 36 Ga. A. 746, 138 SE 282, decided May 11, 1927, involving conditional sales contracts (but opposite result reached on former hearing: 35 Ga. A. 184);

Taylor v. Buser, 167 NYS 887, decided Dec. 8, 1917 (involving lien through legal proceedings against wages earned after adjudication in bankruptcy on debt not dischargeable);

Wade v. Bank, 216 Ala. 539, 113 So. 617, decided June 30, 1927, (involving mortgage only);

Cohen v. Utter, 152 Ga. 157, 108 SE 538, decided Sept. 30, 1921, (involving a judgment within four months of bankruptcy on notes waiving homestead and

exemptions, one judge dissenting on strength of Chicago vs. Hall, *supra).*

Other cases (prior to the Hall case) support the claims of petitioners:

Hall v. Chicago, 88 Neb. 20, 128 NW 645, decided Nov. 26, 1910, (citing Wise v. Lead, 123 Mo. A. 249, 100 SW 680; Armour v. Wynn, 119 Ga. 683, 46 SE 865; Wood v. Carr, 115 Ky. 303, 73 SW 762; Alexander v. Wilson, 144 Cal. 5, 77 P 706; Thompson v. Ragan, 117 Ky. 577, 78 SW 485; In re Beals, 116 Fed. 530; Clarke v. Larremore, 188 U. S. 486, 23 S. Ct. 363, 47 L. ed. 555);

Cavanaugh v. Fenley, 94 Minn. 505, 103 NW 711, 110 ASR 382, decided May 19, 1905, (disapproved, however, on the point involved here in Swaney v. Hasara, 164 Minn. 416, 205 NW 274, and Martin v. Green, 166 Minn. 405, 208 NW 21);

Hobbs v. Thompson, 160 Ala. 360, 49 So. 787, 18 Ann. Cas. 381, decided June 5, 1909;

Kellogg v. Schmidt, 101 Ill. A. 209, decided Mar. 18, 1902;

Wright v. Sanders, 142 Mo. A. 50, 125 SW 517, decided Feb. 7, 1910;

Klipstein v. Allen, 136 Fed. 385, 69 CCA 229, decided Jan. 11, 1905;

White v. Schloerb, 178 U. S. 542, 20 S. Ct. 1007, 44 L. ed. 1183, decided May 28, 1900;

Bank v. Staake, 202 U. S. 141, 26 S. Ct. 580, 50 L. ed. 967, decided Apr. 30, 1906;

Janes v. Beach, 1 Mich. N. P. 94, decided 1869.

It thus appears, we think, that the decision of the Supreme Court of North Dakota is in definite conflict with the Bankruptcy Act itself, and applicable decisions of this court; but, notwithstanding such conflict, the construction and application of such law and such decisions have been rendered doubtful by subsequent decisions of the highest courts in various states; that the administration of the Bankruptcy Act throughout the land, with reference to the question presented, lacks uniformity; and, consequently, that the question is of sufficient importance and debate to call for this Court's power of supervision.

WHEREFORE petitioners respectfully pray a writ of certiorari issue.

JOHN A. JORGENSON,
Counsel for Petitioners.

September 18th, 1933.

BRIEF IN SUPPORT OF PETITION

OPINION BELOW

The opinion of the Supreme Court of North Dakota is reported in ..... Northwestern ..... (Advance Sheets).

JURISDICTION

The judgment of the Supreme Court of North Dakota was entered July 17, 1933, and became final fifteen days later. Jurisdiction is conferred upon this court by Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 937 (USCA, Title 28, Sec. 344 (b)).

STATEMENT OF THE CASE

The facts are stated in the preceding petition.

STATUTE INVOLVED

Bankruptcy Act of July 1, 1898, c. 541, Sec. 67, 30 Stat. 564 as amended Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; June 25, 1910, c. 412, Sec. 12, 36 Stat. 842:

"Sec. 67(f) That all levies, judgments, attachments, or other liens, obtained thru legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void *in case he is adjudged a bankrupt*, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same. and shall pass to the trustee as a part of the estate of the bankrupt, unless the court, shall, on due notice, or-

der that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect. Nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

ASSIGNMENT OF ERROR

The courts below erred in refusing to stay all proceedings in the State Court pending termination of the bankruptcy proceedings; in trying an action based solely on an admitted debt dischargeable in bankruptcy and a lien nullified by the adjudication in bankruptcy; in rendering judgment on such a debt, *in rem*, based on the continued existence of such lien, and appropriating the attached property to the payment of a single creditor.

THE ARGUMENT

The Decision of the Court Below That the Lien Under Sec. 67(f) of the Bankruptcy Act Is Avoided Only As to the Trustee Is In Conflict With the Express Provisions of the Bankruptcy Act and Decisions of This Court.

It will be observed in the Statute quoted, such lien is avoided "in case he (the debtor) is adjudged a bank-

rupt." There is no additional requirement that it further appear a trustee was appointed or the bankruptcy court laid claim to the property.

Yet state courts have persistently read into this provision conditions and exceptions. In an early case (Rochester v. Locke, 72 NH 22, 54 A 705, decided Feb. 3, 1903, *supra),* the Supreme Court of New Hampshire says:

"The peculiar language used raises the question by whom and when are such liens to be deemed 'null and void' and the property affected deemed 'wholly discharged and released therefrom?' The inquiry is answered by the general purpose of the Act and the language of the section. The property, by the section, is to pass to the trustee as a part of the estate of the bankrupt. From this it follows that in any controversy between the trustee and the lienholder, and in any proceeding in relation thereto for the purposes of the act, the lien is to be deemed null and void. Further than this, the act does not go." And this New Hampshire case is cited in practically all subsequent cases on the question, even by the Supreme Court of North Dakota.

As we view it, however, this language of the New Hampshire Supreme Court has been overruled by Chicago B. & Q. Railway vs. Hall, *supra,* (229 U. S. 511, 57 L. ed. 1306, 33 Sup. Ct. 885, decided June 9, 1913) where the court says:

"Barring exceptional cases, which are specially provided for, the policy of the act is to fix a four months' period in which a creditor cannot obtain an advantage

over other creditors, nor a lien against the debtor's property. 'All liens obtained by legal proceedings' within that period are declared null and void. *That universal language is not restricted by the later provision that 'the property affected by the lien shall be released from the same and pass to the trustee as a part of the estate in bankruptcy.'*"

In the cases decided by the Supreme Courts of Colorado, New Jersey, Minnesota, and Maine (cited *supra),* wherein, since the decision in Chicago v. Hall, *supra,* they held the lien is avoided only as to the trustee—it appeared that the bankruptcy proceedings were terminated, and no claim made to the property in such bankruptcy proceedings. They argue that it thus appears the Bankruptcy Court has abandoned the property, and on termination of the bankruptcy proceedings, it reverts to the bankrupt in the condition it was in before institution of the bankruptcy, i. e., subject to the lien. However this court has recently said (Isaacs v. Hobbs, 282 U. S. 734, 51 Sup. Ct. 270, decided Feb. 24, 1931) that the Bankruptcy Court is "powerless" to abandon the bankrupt's property.

The Supreme Court of Iowa (People v. Maxon, 168 Iowa 318, 150 NW 801, decided Jan. 12, 1915, *supra),* in one of the leading state opinions in favor of petitioners, presents some of the arguments pro and con as follows:

"As to the 80 acres of land outside the homestead, appellant contends that the bankrupts, the Maxsons, cannot claim the benefit of section 67f of the Bankruptcy Act, so as to make void the judgment of plain-

tiff which had become a lien upon the 80 acres prior to the bankruptcy; that the purpose of the Bankruptcy Act, under section 67f, was to allow the trustee to claim the benefit of section 67f if he desired; that in this case the trustee set aside the homestead, asserted no right to the 80 acres, and was discharged without giving any deed to the 80 acres; that plaintiff bank relies upon the lien of this judgment upon the 80 acres. They say that section 67f does not avoid levies, liens, etc. against all the world, but only against the trustee in bankruptcy, citing cases, which, as before stated, have been reviewed by the Supreme Court of the United States in the Hall case. That section 67f confers rights only upon the trustee, not upon the bankrupt, and that only the trustee, or those holding under him, can claim the benefit of the section. The argument is that the purpose of section 67f of the Bankruptcy Act is to vest in the trustee the property of the bankrupt, and, had the trustee claimed the property, his rights would prevail as against the lien of the judgment of the plaintiff under that section; that the trustee did not choose to assert title to the remaining 80 acres, and was discharged by the bankruptcy court on the closing of the bankrupt estate. It is admitted by appellees that on and before March 26, 1908, the date of the filing of the petition in bankruptcy, plaintiff's judgment was a lien on the 80 acres, but that, because the judgment and lien was within four months, the lien was void or annulled. . . .

"Some of the discussion of the Bankruptcy Act in the first paragraph of the opinion is applicable here.

Under the decisions, plaintiff's judgment lien ceased to be a lien on the land, because the Maxsons were adjudged bankrupts within four months from the time of the rendition of the judgment. C., B. and Q. R. R. Co. v. Hall, supra; In re Forbes, 26 Am. Bankr. Rep. 255, 186 Fed. 79, 108 CCA 191; In re Tune, D. C., 8 Am. Bankr. Rep. 285, 115 Fed. 996.

"It has been held that it is not only a right, but a duty, of the trustee to refuse to take possession of property that is scheduled as an asset, unless it will be beneficial to the general creditors (In re Dillard, 2 Hughes, 190, 7 Fed. Cas. 703; Glenny v. Langdon, 98 U. S. 20, 25 L. ed. 43), and that, if the trustee renounces and abandons assets, the title to the same reverts to the bankrupt. The creditors are estopped from thereafter insisting that the property which was abandoned shall be considered a part of the estate. Sparhawk v. Yerkes, 142 U. S. 1, 12 Sup. Ct. 104, 35 L. ed. 915; Sessions v. Romadka, 145 U. S. 29, 12 Sup. Ct. 799, 36 L. ed. 609; Taylor v. Irwin, C. C. 20 Fed. 615.

"As before stated, counsel for plaintiff contend that the Bankruptcy Act only avoids the lien in favor of the trustee, and cites cases to support the contention. But as shown, the Supreme Court of the United States, in the Hall Case, supra, holds that the effect of the statute is to annul the lien both as to nonexempt, as well as to exempt, property. When the lien was anulled, it cast the title to the property upon the trustee, and the trustee represents the creditors. In re Kreuger, D. C. 27 Am. Bankr. Rep. 440, 196 Fed. 705.

"Afterwards the creditors must work out their claim thru the trustee. If the trustee refuses to take possession of any property because he thinks it is a burden, the court, upon application of a creditor, could investigate the question. The trustee may act wisely or unwisely in so doing, but, once he acts, the creditors are bound by his action, unless they ask a review by the court. Glenny v. Langdon, *supra;* In re Dillard, *supra.*"

The North Dakota Courts Should At Least Have Stayed All Their Own Actions Until Termination of the Bankruptcy Proceedings.

The Supreme Court of North Dakota has even gone beyond the Supreme Courts of Colorado, New Jersey, Minnesota, and Maine. It holds that the state courts may go forward while the bankruptcy proceedings are still pending.

When motion was made to stay proceedings in the state court at the opening of the term on March 7, 1932, it had before it a verified complaint alleging that petitioner Connell was insolvent, and an exemplified copy of the adjudication in bankruptcy within four months of the attachment. This record it would seem required a finding that the lien was null and void, since the Bankruptcy Act provides it becomes so "in case he (the debtor) is adjuded a bankrupt." The North Dakota courts seem to require that the trustee appear and claim the property. If this rule be right, the state court might proceed to judgment before the Bankruptcy Court

could function. There would be nothing to prevent the state court from trying and deciding the case on the opening day of the term, March 7, 1932, before proceedings could be had in the Bankruptcy Court for the selection of a trustee or claiming the property.

It has repeatedly been held that the filing of the petition in bankruptcy is a caveat to all the world, and in effect an attachment and injunction. (Mueller v. Nugent, 184 U. S. 1, 22 S. Ct. 269, 46 L. ed. 405; Clay v. Waters, 178 Fed. 385, 101 C. C. A. 645, 21 Ann. Cas. 897.) "The filing of the petition and adjudication in the bankruptcy court brought the property of the bankrupts, wherever situated, into *custodia legis,* and it was thus held from the date of the filing of the petition, so that subsequent liens could not be given or obtained therein, nor proceedings had in other courts to reach the property, the court of original jurisdiction having acquired the full right to administer the estate under the bankruptcy law." (Lazarus v. Printice, 234 U. S. 263, 34 S. Ct. 851, 58 L. ed. 1305, citing Mueller v. Nugent, 184 U. S. 1, 46 L. ed. 405, 22 S. Ct. 269; Acme v. Beckman, 222 U. S. 300, 56 L. ed. 208, 32 S. Ct. 96; 49 Fed. (2nd) 745, CCA.)

This court has recently said (Isaacs vs. Hobbs, 282 U. S. 734, 51 S. Ct. 270, supra, decided Feb. 24, 1931): "Upon adjudication, title to the bankrupt's property vests in the trustee with actual or constructive possession, and is placed in the custody of the bankruptcy court. Mueller v. Nugent, 184 U. S. 1, 14, 22 S. Ct. 269, 46 L. ed. 405. The title and right to possession of

all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. Robertson v. Howard, 229 U. S. 254, 259, 260, 33 S. Ct. 854, 57 L. ed. 1174; Wells v. Sharp, C. C. A., 208 Fed. 393; Galbraith v. Robson, C. C. A. 216 F. 842. It follows that the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. Robertson v. Howard, supra; In re Wilka, D. C. 131 F. 1004. When this jurisdiction has attached, the court's possession cannot be affected by actions brought in other courts. White v. Schloerb, 178 U. S. 542, 20 S. Ct. 1007, 44 L. ed. 1183 (where the bankrupts made the attack); Murphy v. John Hofman, 211 U. S. 562, 29 S. Ct. 154, 53 L. ed. 327; Dayton v. Stanard, 241 U. S. 588, 36 S. Ct. 695, 60 L. ed. 1190. This is but an application of the well-recognized rule that, when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession, and control of the property. Murphy v. John Hofman, supra; Wabash v. Adelbert, 208 U. S. 38, 28 S. Ct. 182, 52 L. ed. 379; Harkin v. Brundage, 276 U. S. 36, 48 S. Ct. 268, 72 L. ed. 457. Thus, while valid liens existing at the time of the commencement of a bank-

ruptcy proceeding are preserved, it is solely within the power of a court of bankruptcy to ascertain their validity and amount and to decree the method of their liquidation. In re City Bank of New Orleans, 3 How. 292, 11 L. ed. 603; Houston v. City Bank, 6 How. 486, 12 L. ed. 526; Ray v. Norseworthy, 23 Wall. 128, 23 L. ed. 116; In re Wilka, supra; Nisbet v. Federal, C. C. A. 229 F. 644."

While, as we view it, unnecessary to a decision of this case, it will be presumed from the adjudication in bankruptcy that a trustee was appointed and qualified. (Ruhl v. Gillespie, ... W. Va. ....., 56 SE 898, 10 LRA NS 305; Stern v. Bradner, 225 Ill. 430, 80 NE 307; Janes v. Beach, 1 Mich. NP 94; Sec. 7936 Compiled Laws, North Dakota, subds 4, 15, 20, and 33; presumption conceded in opinion of North Dakota Supreme Court, R. p. ....., line .....)

BANKRUPTCY ACT. Property; Title. (Sec. 70.)

"(a) The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all . . . . (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him. . . . .

"(e) The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as defined in this title, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction." (July 1, 1898, c. 541, Sec. 70, 30 Stat. 565; Feb. 5, 1903, c. 487, Sec. 16, 32 Stat. 800; May 27, 1926, c. 406, Sec. 16, 44 Stat. 667; USCA, Title 11; Sec. 110.)

The title, then, to the property here involved, if fraudulently conveyed, and any cause of action to recover the same, was manifestly in the trustee. Petitioners had a right to litigate their rights in the property, either in the Bankruptcy Court, or in a plenary action by the trustee. (Trimble v. Woodhead, 102. U. S. 647, 26 L. ed. 290; Glenny vs. Langdon, 98 U. S. 20, 25 L. ed. 43; Moyer vs. Dewey, 103 U. S. 301, 26 L. ed. 394; Ruhl vs. Gillespie, ... W. Va. ....., 56 SE 898, 10 LRA NS 305 and note.) Manifestly the question of whether or not the transfer was fraudulent must be litigated between the proper parties and in the proper forum, and any discussion or consideration of this question in the case at bar, would be, we think, improper. So far as the merits of this question are concerned, judgment has been practically rendered against petitioners by default.

"The right to sue for and subject to the payment of

his debts, effects fraudulently transferred by a party who was subsequently adjudged a bankrupt is vested *alone* in his assignees, and their failure to enforce it within the time prescribed by the bankruptcy law, does not transfer that right to creditors." (Moyer vs. Dewey, *supra*).

All action by the state court subsequent to the adjudication in bankruptcy was *coram non judice*. (Gross v. Irving, decided May 8, 1933, 53 Sup. Ct. 605. Wright vs. Sanders, 142 Mo. A. 50, 125 SW 517.)

CONCLUSION

It is respectfully submitted that the petition for certiorari should be granted, and the judgment of the Supreme Court of North Dakota reversed.

JOHN A. JORGENSON,
Counsel for Petitioners.

INDEX

	page
Statement of Matter Involved	1
Reason Why Petition Should Be Dismissed	10
Argument	14
Conclusion	22

TABLE OF CITATIONS

	page
Bankruptcy Act, Sec. 72 g	21
Bankruptcy Act, Sec. 62 b	21
Bankruptcy Act, Sec. 72 g	21
Bankruptcy Act, Sec. 47 c	13
Bankruptcy Act, Sec. 69 e	21
Bankruptcy Act, Sec. 23 e	21
Black on Bankruptcy, Sec. 935	20
Corpus Juris, Vol. 27, pg. 474, 427 et Seq. and notes	19
Corpus Juris, Vol. 7, page 197 and cases cited	21
Corpus Juris, Vol, 7, page 350	11-21
Corpus Juris, Vol. 27, page 486	21
Corpus Juris, Vol, 27, page 989	21
Corpus Juris, Vol. 27, pages 493-494-495	21
Corpus Juris, Vol. 18, pages 265-268	21
Donahue v. Kohler-McLister et al 254 Pac. 989	21

page

Donovan v. St. Anthony Ele. Co., 8 N.D. 585 20
Ellis v. Fiske, 60 N. D. 142, 232 NW 891
71 L R A 501 and cases cited therein ---- 19
First National Bank v. Casselton Realty & Investment Co., 44 N. D. 353
Federal Rep. 160, 903 ---------- 21
Federal Rep. 101, 248 ---------- 21
Goss v. Herman, 20 N. D. 295, 127 NW 78 21
Isaacs v. Hobbs, Tie & Timber Co., 282 U. S. 734, 75 L. ed 645, and note ---------- 20
Johnson v. Waxenbaum Co., 1 Ga., 511, 58 SE 56 ---------- 12
Jones v. Flatters, 54 ND 459 ---------- 21
20 Minn. 81
Martin v. Green Lake State Bank, 208 NW 21 ---------- 20
Miller v. Barto, 247 Ill. 104, 93 NE 140 --- 20
McGowan v. Bowan, 79 Vt. 295, 64 Atl. 1121 ---------- 12
McCoy v. Davis, 38 ND 328, 164 NW 951 --- 21
Mott v. Holbrook, 28 ND 251 ---------- 18
28 Minn. 414
Neugent Garment Co. v. U. S. Fidelity & Guaranty Co. 231 NW 600, & 230 NW 69 19
N. D. Session Laws 1929, Chapter 249, 351 20
N. D. Compiled Laws 1913, Sec. 5594 ---- 20

Peck v. Peck, 212 NW 872 (SD) 21-20
Rodges v. Abbot, 206 Mass, 270, 92 NE 417
138 Am. S. R. 394 12
Rochester Lumber Co. v. Locke 72 NH 22,
54 Atl. 705 20
R. C. L. 3 185 and 186
Swaney v. Hasara, 164 Minn. 416, 205 NW
74 20
Simons v. Wells, CCA9 6980 June 5, 1933 .. 20
State v. Broadhus, 234 Mo. 358, 137 SW 268 12
Straten v. New Receiver, 283 U. S. 318 20
Union Nat'l Bank v. Oium, 3 ND 193, 54
NW 1034-44 ASR 533 19

In the Supreme Court

OF THE

United States

October Term, 1933

GRACE LEWIS CONNELL, MERLE C. ADAMS, and MARY ADAMS,
Petitioners,

vs.

EVA S. WALKER,
Respondent.

No.____

RESPONDENT'S BRIEF AND MOTION TO DISMISS PETITION FOR WRIT OF CERTORARI

STATEMENT OF MATTER INVOLVED

The petitioners and respondent were for many years neighbors and friends in North Dakota where the debt, evidenced by note dated November 1st, 1930, for $3500.00, Exhibit "1" Page 56, of the transcript of record, was first incurred by the Petitioner, Grace Lewis Connell, to obtain money to save her farm of

five hundred twenty acres (520), located in Ramsey County, North Dakota, from a mortgage foreclosure.

The debt was renewed from time to time; and in 1930 respondent suggested that the debt should be secured by a mortgage on the land. The Petitioner, Connell, was reluctant to give such a mortgage. She said it had always been understood that the land was to be held by her as security for the debt without a mortgage; that she would pay the debt as fast as the proceeds of the farm would permit and would not sell or mortgage the land without first paying the debt; that they had been friends for many years and she had always kept her word with the respondent and would continue to do so.

About one year later, February 1st, 1931, when again pressed by respondent to secure the debt, she said she owed no other debt and was good for the money; however she would talk the matter over with her son, the petitioner, Merle C. Adams, and advise the respondent of her decision.

On June 12, 1931, petitioner, Connell, gave a Deed to petitioners Merle C. Adams and Mary Adams, his wife, her son and daughter-in-law,

conveying all this property for a consideration stated in the Deed as $10.00. The property was later in Court stipulated to be worth $5000.00.

The note in question, Exhibit "I" not being paid, respondent on December 1, 1931, brought this action in Ramsey County North Dakota, to recover on the note and attached this land, the action being in Rem, no personal service being obtained on the defendants.

In her Complaint the plaintiff, respondent herein, set out the facts of the execution and delivery of the note; its non-payment; that she was the owner thereof; that the defendant, Connell, owned the land in Ramsey County which was later attached; that the indebtedness covered by the note represented money loaned to Connell for the purpose of discharging mortgages thereon; that the transfer on June 12, 1931, was fraudulent and without consideration, and with intent to cheat and defraud her creditors and to hinder and delay them in the collection of their debts. That the Defendants, Adams, accepted and received the said Deed with the knowledge of the fraudulent intent and purpose of the defendant, Connell; that the defendant, Connell, had no

other land or property within the State of North Dakota, or elsewhere, and that said transfer rendered her wholly insolvent.

The plaintiff demanded judgment against defendant Connell for the amount of the note, with interest and costs, and against all the defendants demanding that the transfer of said land be set aside as fraudulent and declared null and void; that the plaintiff had a first and prior lien on and to the said premises. The plaintiff then secured a writ of attachment on the grounds that the defendants were non-residents and the land was duly attached. Service was had on all the defendants by publication and on December 28th, 1931, they served their joint answer upon the plaintiff, verified by the defendant Connell, admitting all the allegations set out and contained in the Complaint excepting only denials of the fraudulent intent of the transfer to hinder and delay any creditor in the collection of a debt; alleging that the transfer was in good faith and for value; admitting that Connell had no other land or property in North Dakota, or elsewhere, upon which the plaintiff could realize her claim, but denied that the transfer of the land ren-

dered the defendant, Connell, insolvent.

On the 29th day of February, 1933, defendant served their joint amended answer wherein they reiterated the allegations, admissions and denials of the original answer, and further alleged that on the 24th day of February, 1932, defendant, Connell, filed her voluntary petition in bankruptcy in the District Court of the United States for the Southern District of California, accompanied by the regular schedules and statement as required by the Bankruptcy Act; and having been duly adjudicated a bankrupt, the defendant demanded that the action be dismissed and that all proceedings therein be stayed until the final disposition of the bankruptcy proceedings.

Thereafter on the 7th day of March, 1931, the defendant filed a motion predicated on the allegations contained in the first amended answer and an affidavit of their counsel, John A. Jorgenson, as to the proceedings in bankruptcy; demanding that all the proceedings in this action be dismissed; that the Trial Court had no jurisdiction and should take judicial notice of the bankruptcy proceedings. The plaintiff resisted the motion and it was denied.

The case came to trial on the issues, the plaintiff offered evidence on her Complaint; the defendant appeared by counsel and obpected to the jurisdiction of the court on the grounds of the bankruptcy proceedings pending and filed the hereinbefore mentioned motion to dismiss Exhibit "A", defendant contending that such adjudication in bankruptcy has been less than four months after the date of the attachment and that therefore the attachment had become null and void, even though the transfer was fraudulent; that the plaintiff was in no position to challenge, or set aside, the transfer. This objection being overruled counsel for defendants participated in the trial, cross examined witnesses but offered no evidence, requesting the Trial Court to take judicial notice of the files and records of the bankruptcy proceedings and ask to obtain permission to present in evidence, a copy of the adjudication and order of reference; counsel then renewed the motion for dismissal.

The trial court adhered to its former ruling on the challenge to the jurisdiction of the Court and validity of the lien of attachment. With the respect to the lien of attachment in this case

he held that the provisions of Section 67F of the Bankruptcy Act could be invoked only by the trustee of the bankrupt or those holding under him.

> "That the attempted recording of the said Deed on July 10, 1931, in the office of the Register of Deeds of Ramsey County, North Dakota, in Book 40 of Deeds, page 448, was a nulity and void for the reason that said instrument was not entitled to record because it did not contain the post-office address or addresses of the grantees therein as required by law.
>
> That such attempted record was, and is, of no force and effect, and that the lien of the plaintiff herein, and to and against said premises, is prior to such Deed and and such attempted recording thereof."
>
> "That the plaintiff was in the position of an innocent purchaser in good faith and for a valuable consideration."

That the transfer of the land in question was without consideration and with intent to defraud the grantors creditors; that the defendants, Adams, had knowledge of the fraud and that therefore the transfer was null and void as against the attaching creditor.

The Trial Court therefore ordered Judgment

that the premises be sold and that the plaintiff be satisfied so far as possible from the proceeds thereof, but that the plaintiff had no general personal judgment against the defendant, Connell. Thereupon the defendant perfected an appeal to the Supreme Court of the State of North Dakota.

The Supreme Court of North Dakota, after a careful review of the proceedings and the evidence, found the facts substantially as herebefore set out and held that the transfer was fraudulent as to the plaintiff; that so far as the records disclose there were no other creditors; that the appellants, Adams, received the Deed without consideration and with knowledge of the fraud; that the evidence amply sustained the trial courts findings in those respects; that the stipulated value of the land was $5000.00. The consideration recited in the Deed was only $10.00, presumptively the only consideration, citing 18 CJ265. That the evidence offered by the plaintiff, was not controverted in any way by the defendants, that, together with the circumstance, that after the instant action was begun the defendant, Connell, became a voluntary bankrupt, amply sustained

the finding of the Trial Court.

That the attachment was effective as against defendant, Connell, thereby the Court acquired jurisdiction so far as Mrs. Connell's interest in the land was concerned and that defendants, Adams, appeared and answered, thus submitting themselves to the jurisdiction of the Court; that the case was tried on its merits and that defendants, Adams, were bound by the judgment.

That there was only a presumption that a trustee was appointed; that the property was not exempt, and the question of the right of the plaintiff to enjoy the fruits of the litigation must be tried as between the plaintiff and the trustee.

That Mrs. Connell having divested herself from all right or title in the property is in no better position than any other stranger to the title; That defendants, Adams, can have no complaint, they are not among those the Bankruptcy Act was intended to benefit and cannot object if the plaintiff in this action enjoys a preference over other creditors. They paid no consideration for the property and were charged with notice of the fraud.

That the defendants motion for dismissal of the action because of the pending bankruptcy proceedings was properly denied, and the objections predicated upon that ground were likewise correctly overruled. That the Trial Court correctly held that the attachment was valid and effective as against Mrs. Connell to the same extent that it would have been had it been fixed more than four months prior to her adjudiation in bankruptcy and that the plaintiffs claim should be, by reason and to the extent of such lien, be satisfied out of the property.

REASON WHY PETITIONS SHOULD BE DISMISSED

It must be remembered that the actual motion ruled on by the trial court at the trial was for an out right dismissal. (Page 51 and page 55 of the Records). The motion of Mr. Anderson for the defendants, after the plaintiff rested was for dismissal, not for a stay of proceedings, page 75 of Record).

True, Counsel had asked for a stay as a part of the prayer of the First Amended Answer

and also filed a Notice of Intention to file a motion to Stay but the actual motion filed at trials was, with the first supporting evidence offered, not for a stay, but dismissal; no other motions were filed.

Any motion for either a peremptory or discretionary stay of an action in State Court would have to allege:

1.—That the suit was based on a claim that was dischargable in bankruptcy. 7 CJ 350.

2.—That a petition in bankruptcy had been filed. The motion for peremptory stay must be based on those grounds and the further ground that the adjudication and reference had not been made and had not been dismissed.

A motion for discretionary stay must allege the adjudication and reference.

3.—That the debt is dischargable in bankruptcy.

4.—That the petitioner had been discharged or ~~and~~ Had made application for discharge which was pending.

The Petitioner herein did not comply, either in their First Amended Answer, or in the Motion for dismissal with any of these necessary

requirements, State vs Broadhus, 234 Mo. 358, 137, SW 268.

Mere statements of defendants counsel can not operate as a stay of proceedings.

McGowan v. Bowman, 79 Vt. 295; Atl., 1121.

To grant a hearing on this petition would defeat the whole purpose of the Bankruptcy act. The Petitioner had plenty of remedies below if he could have Predicated his motion on sufficient grounds for stay or dismissal. On the record he was not entitled as a right to a stay or a dismissal. Rodges v. Abbot 92 N. E. 472.

Johnson v. Waxelbaum & Co., 1 Ga., A 511, 58 S. E. 56; McGowan v. Bowman, 79 Vt., 295—64 A. 1121.

Defendant and petitioner, Grace Lewis Connell, gave a Warranty Deed to the premises attached, on June 12, 1931, Exhibit "2", page 57 of the record, whereby and wherein she granted bargained, sold and conveyed the tract of land which is the subject matter of this action. In her verified Answer, paragraph 4, she alleges that the said transaction was made in good faith. There is no record of any transfer of this property back to Mrs. Connell. True, this Deed was not entitled to record and the

courts have found that it was an attempted fraud on this plaintiff creditor but this would not give Mrs. Connell an equitable right to profit by her own wrong, and claim interest in the property for herself or for any other person except perhaps her original grantee.

In her First Amended Answer she alleged she had surrendred to the Bankruptcy Court, any right or title she had to this land on February 24th, 1932, more than four months after the said Warranty Deed was given. She did not have any right or title to surrender voluntarily, nor could she have recovered any by an action in her own name, and there is a question whether or not a trustee, if one had been appointed, could have recovered more than four months after the transfer under the rules of the Bankruptcy Act.

We must assume in view of the above facts that the alleged trustee, if there was one appointed if he considered he had any rights worth protecting would have filed in the office of Register of Deeds of Ramsey County, North Dakota, a notice of his claim as required by Section 47C of the Bankruptcy Act, and intervened in the pending action to set aside the

transfer as a fraud on all the Creditors.

Defendant, Adams, could have had no interest in the bankruptcy proceedings in any event. Their rights depended on a Deed given more than four months before the proceedings and if a trustee had been appointed and cared to intervene he could have done so by introducing in evidence, a copy of his appointment and of Schedule "B" (4) showing his interest in the property, none of which was done. It is upon such vague and uncertain interest that these petitioners rest their right of review.

The question might well be asked "who would be benefitted if it were granted". Connell would lose anything she might gain to her grantee (Adams) as an after acquired title and he could not benefit by his grantors bankruptcy, nor by his failure to record his Deed, fraudulently obtained, prior to the attachment proceedings, and we have no trustee.

ARGUMENT.

The record of the bankruptcy proceedings were too uncertain to support a motion to dismiss this action, even if it should be conceded that any person, other than the Trustee, was entitled to such relief.

There was no evidence of the appointment of of a trustee, no evidence that the North Dakota property was listed in the schedules; no evidence that the respondents, claims was listed among the debts. There is nothing but a copy of the Adjudication and Reference.

True, there is an allegation in the First Amended Answer and the Affidavit of Counsel in support of motion which are a part of the proceedings but no evidence whatsoever. If there had been such proceedings we believe Counsel would not have overlooked filing copies when they asked for a stipulation to permit the introduction of the Order of Adjudication, (page 1 of the Record.) We must take the record as it is and must assume the bankruptcy proceedings went no further than the Order and Reference, in that case, if petitioner could get this action dismissed she would still be the record owner of the land, free from her debts, assuming that her deed to her son would convey to him her after acquired title they would have accomplished their purpose and have defeated the whole object of the Bankruptcy Act. As we view it the law cited by the petitioner is not in point until they have first laid a founda-

tion and actually established by competent evidence the status of the bankruptcy proceedings and no doubt the Trial Court would have given them plenty of time to secure such evidence if they would have asked for a stay for the purpose of securing additional evidence but they did not ask for a stay for that purpose, but for a dismissal.

The Trial Court and Supreme Court of North Dakota having especially noted the "badges of fraud" in Mrs. Connell's statement to Morris; her subsequent Deed to her son and the conflict of her verified allegations in her first answer and first amended answer, would naturally require good proof that the bankruptcy procedings were instituted in good faith and the failure of the Plaintiffs to furnish such proof is the best argument for the courts overruling the motion to dismiss.

The Trial Court would, in any event, hesitate to dismiss the action to set aside a fraudulent transfer until the trustee had an opportunity to appear and intervene, since setting aside a fraudulent transfer would be for the benefit of the Bankrupt estate and for the benefit of the creditors and the fruit of the action could

await further proceedings before being awarded. In fact we believe that the judgment of the trial court and the opinion of the Supreme Court are well founded on the evidence and in strict accord with the law and the rules of the Courts of Equity and who is in a position to come into court with clean hands and complain.

There can be no disputing the rights of an innocent purchaser for value to have obtained a perfectly good title to this property from Defendant, Connell, until some instrument had been filed for record in the office of the Register of Deeds, in Ramsey County, North Dakota, where instruments effecting the title of land, involved in this action, must be filed and recorded, giving notice of other claims to the title; Sec. 5594, Compiled Laws, North Dakota, 1913.

> "It is not the actual interest in the state that is thus liened by attachment but interest that is shown by the records of the Register of Deeds office."

"Under the statute and holding of this Court the attaching creditor is a purchaser in good faith as the date of the attachment _____

if the law makes the previous transfer void as to the creditors there is no transfer at all and the record title to the property remains in the debtor. (Mott vs. Holbrook, 28, N. D., page 25)."

Under the laws of the State of North Dakota and the ruling of its Courts; until some instrument is filed in the place for recording transfers of this land the legal title remains in the Defendant, Grace Lewis Connell, by reason of the Deed to her son not being entitled to record, and this attaching creditor is in the same position as an innocent purchaser for value until a better title is established by the filing of some other instrument, either as a transfer or notice of a claim; filing of such a notice as is required by the bankruptcy act on the part of the trustee.

This property was attached, sold by order of the court, and the Sheriff's Certificate of Sale has matured into a Deed and the land is now owned by subsequent purchasers in good faith and for a valuable consideration whose record title is perfectly clear.

Grace Lewis Connell got this money in good faith to save her farm from mortgagees; she

admits it, and we can not believe that such a transparent effort to use the bankruptcy courts for the purpose of fraud can succeed.

We contend that citations referring to rights of a trustee or of a bankrupt over his exempt property set over by the bankruptcy court, are not in point for the reason that there is no trustee and this is not exempt property.

We also contend that citations based on the theory of insolvency of the petitioner in bankruptcy, at the time of attachment was procured, are not in point and can not be raised by petitioners herein, since they have already alleged by verified answer that Grace Lewis Connell was not insolvent when the attachment was made. They have no other right from the record, than any other stranger to the record.

The following citations are respectfully submitted.

As to effect of 67 F of the Bankruptcy Act:

27 C. J. 474 and 727 et seq. and notes.

Union National Bank v. Oium 3 N. D. 193, 54 N. W. 1034, 44 A. S. R. 533

Also Ellis v. Fiske 60 N. D. 142, 232 N. W. 891 71 A. L. R. 501 and cases cited therein.

Neugent Garment Company v. U. S. Fidelity & Guaranty Co., 231 NW 600 and 230 N. W. 69

Swaney v. Hasara, 164 Minn., 416; 205 N. W. 274.

Miller v. Barto, 247 Ill., 104, 93 N. E. 140.

Rochester Lumber Co. v. Locke, 72 N. H. 22, 54 Atl., 705, 7 C. J. 197 and cases cited.

Matrin v. Green, et al, 166 Minn., 208, NW 21, Black on Bankruptcy Section 935.

Recovery of Land Transferred:

Sec. 72 (E) Bankruptcy Act.

As to No Claims by Trustee:

Straton v. New, 283 U. S. 318, 75 L. ed 1060 and note;

Simons v. Wells, Receiver CCA No. 6980 June 5, 1933

See also Isaac v. Hobbs Tie & Rubber Company, 282 U. S. 734, 75 L. ed. 645 and note

RCL 3-252.

As to Plft. Prima Facia case:

Peck v. Peck, 212, 872 (T. I.)

As to Connells Deed not being entitled to record and rgihts of attaching creditors:

Sec. 5594 Compiled Laws of North Dakota, 1913

Chapter 249, pg. 351, Session Laws 1929

Donovan v. St. Anthony & Dakota Elevator Co., 8 N. D., 585

First Natl. Bank v. Casselton Realty & Investment Co., 44 N. D., 353

Goss v. Herman, 20 N. D., 295, 127 NW 78

McCoy v. Davis, 38 N. D., 328, 164 NW 951

Donahue v. Kohler McLister, et al, 254 Pac 989.

As to the attempted fraud by parent & son:

Jones v. Flatters, 54 N. D., 459

Peck v. Peck, 212 NW (S. D.) 872

27 C. J. 486-989-493-494-495

18 C. J. 265-266

Jurisdiction of the Court:

Secs. 69E-72G. 23E Sec. 62 (b) Bankruptcy Act.

RCL 3-185-186

160 Fed. 903, 101 Fed. 248, 28 Minn., 414, 20 Minn., 81.

The only specification of error, or the only reason given by the petition for a writ of Certiorari herein, is because the lower court denied a motio nfor stay of proceedings. We find, however, that the motion made was not a motion for a stay but a motion to dismiss. The lower court could not have erred in denying a motion to stay when no such motion was pre-

sented, and the petition of this petitioner herein must fail.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied and judgment of the Supreme Court of North Dakota be sustained.

SUPREME COURT OF THE UNITED STATES.

No. 535.—October Term, 1933.

Grace Lewis Connell, Myrle C. Adams and Mary Adams, Petitioners, *vs.* Eva S. Walker.	On Writ of Certiorari to the Supreme Court of the State of North Dakota.

[January 8, 1934.]

Mr. Justice Stone delivered the opinion of the Court.

This case comes here on certiorari, 290 U. S. —, to review a judgment of the Supreme Court of North Dakota involving the application of certain provisions of the Bankruptcy Act. The respondent, a creditor of petitioner Connell, brought suit in the District Court of Ramsey County, North Dakota, to set aside, as in fraud of creditors, a conveyance by Connell to the other petitioners of land located in the state. The suit was begun by attachment of the land, and while it was pending in the trial court the petitioners, by a motion for stay of proceedings and by their amended answer, set up that within four months after the attachment petitioner Connell had filed a voluntary petition in bankruptcy in the District Court for Southern California, which had resulted in an adjudication of bankruptcy. It was not shown whether a trustee had been selected. The county court, upon the trial, found that the conveyance was in fraud of creditors and gave judgment for the respondent, which the Supreme Court of the state affirmed, — N. Dak. —, directing that the land be sold and the proceeds applied to the satisfaction of the indebtedness to respondent. The relief granted was restricted to the sale of the attached land by a provision of the judgment that it should not be deemed to establish the personal liability of any of the petitioners.

Petitioners argue here, as they did in the state courts, that under § 67 (f) of the Bankruptcy Act, 11 U. S. C. A., § 107 (f), the lien of the attachment upon which the judgment was founded was a

nullity because procured when the bankrupt was insolvent and within four months before the filing of the petition in bankruptcy, so that no judgment could be given or enforced against the attached property, and they insist that in any event the state court should have stayed the action until the termination of the bankruptcy proceedings.

We may assume, for present purposes, that the trustee in bankruptcy, if there is one, could have taken and may still take appropriate proceedings to set aside the attachment as invalid under § 67 (f), 11 U. S. C. A. § 107 (f),[1] either by intervention in the action in the state court, as authorized by § 11 (b), 11 U. S. C. A., § 29 (b); see *Lehman, Stern & Co., Ltd.* v. *S. Gumbel & Co., Ltd.*, 236 U. S. 448; *Isaacs* v. *Hobbs Tie & Timber Co.*, 282 U. S. 734, or by procuring an order of the bankruptcy court staying any further proceedings by the state court to secure the benefit of the attachment, *Clarke* v. *Larremore*, 188 U. S. 486; see *Globe Bank* v. *Martin*, 236 U. S. 288; compare *Metcalf* v. *Barker*, 187 U. S. 165; *Straton* v. *New*, 283 U. S. 318, or that he might have avoided the attachment by the assertion of dominion over the property inconsistent with the continued existence of the lien, *Chicago, Burlington & Quincy R. R. Co.* v. *Hall*, 229 U. S. 511. But § 67 (f) also extends to the trustee the privilege of procuring an order of the bankruptcy court directing that the right under the lien of attachment be preserved for the benefit of the bankrupt's estate, and to secure its benefits he may, as provided in § 67 (c), be subrogated to all the rights of the lienor. See *Rock Island Plow Co.* v. *Reardon*, 222

[1] § 67 (f). "That all levies, judgments, attachments or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect. Nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

U. S. 354; *Miller* v. *New Orleans Acid & Fertilizer Co.*, 211 U. S. 496, 505; *First National Bank* v. *Staake*, 202 U. S. 141.

Here the trustee, if any, is not a party to the suit and he is not shown to have made the election with respect to the attachment lien for which § 67 (f) provides. This privilege is one of substance, see *Rock Island Plow Co.* v. *Reardon, supra*, and the statute gives it to the trustee, not to the bankrupt or his creditors. A judgment of dismissal, as prayed by the petitioners, would have dissolved the attachment and thus would have enabled the bankrupt to cut off the privilege reserved to the trustee to preserve it. We do not think the statute can be construed to require that result.

Petitioners place reliance upon the language of the opinions in *Lehman, Stern & Co., Ltd.* v. *Gumbel & Co., Ltd., supra*, and in *Chicago, Burlington & Quincy R. R. Co.* v. *Hall, supra*, which state in the broad words of the statute that liens acquired within four months of the filing of the petition are "void". But in the one case the receiver, by his intervention in the action in the state court, and in the other the trustee, by appropriate action taken in the bankruptcy court, had asserted the invalidity of the lien acquired by the local suit. In neither does the decision militate against the conclusion which we reach here that the bankrupt alone can not invoke a judgment which would preclude the exercise of the privilege reserved to the trustee to assert rights under the lien.

Bankruptcy proceedings do not, merely by virtue of their maintenance, terminate an action already pending in a non-bankruptcy court, to which the bankrupt is a party. *Pickens* v. *Roy*, 187 U. S. 177; *Jones* v. *Springer*, 226 U. S. 148; *Straton* v. *New, supra*. This is obviously the case where the suit like the present one is brought by a creditor to set aside a fraudulent conveyance of the bankrupt, made more than four months before the petition in bankruptcy. The right asserted is one given the creditor by state law which the Bankruptcy Act withdraws from him only upon the election of the trustee to assert the rights of the creditor, as he is privileged to do by § 70 (e), 11 U. S. C. A. § 110 (e), an election, which, in this case, does not appear to have been made. Compare *Sparhawk* v. *Yerkes*, 142 U. S. 1; *Dushane* v. *Beall*, 161 U. S. 513; *First National Bank* v. *Lasater*, 196 U. S. 115; *American Exchange Bank* v. *Goetz*, 283 Fed. 900; *Laughlin* v. *Calumet & Chicago Canal & Dock Co.*, 65 Fed. 441; and cf. *Thomas* v. *Sugarman*, 218 U. S. 129. Upon this

record no case is made entitling the petitioners, under any provision of the Bankruptcy Act, to a judgment of dismissal.

The question remains whether, the trustee having failed to assert any rights with respect to the pending action, the state court was required to stay it by any provision or necessary implication of the Bankruptcy Act. We find it unnecessary to decide whether § 11 (a), 11 U. S. C. A. § 29 (a), authorizing a stay of certain suits pending against a bankrupt,[2] lays down a rule for non-bankruptcy as well as bankruptcy courts,[3] or whether it is applicable to suits like the present one[4] or whether the bankrupt may invoke its provisions.[5] For, if applicable here, the authority given by that section to stay pending suits after adjudication, which has taken place here, is not mandatory, but permissive, to be exercised in the sound discretion of the court. There is no suggestion that there was any abuse of discretion by the state court in refusing to stay its hand on the bare showing by the fraudulent bankrupt that there had been an adjudication in bankruptcy. It does not appear that there is any creditor other than respondent, or that the trustee had not been advised of the suit, or that the bankrupt could not by giving notice to the trustee, have afforded the trustee ample opportunity to assert his rights if there were other creditors to protect. On the other hand, if § 11 (a) does not apply, but if it be assumed that the general scheme of the Act implies some duty of the state court to preserve the estate until opportunity is given the bankruptcy court to assert its jurisdiction, see *Acme Harvester Co.* v. *Beekman Lumber Co.*, 222 U. S. 300, 308; *In re Moore*, 42 F. (2d) 475, 478, still the petitioners have failed to show that there has been no such opportunity.

Affirmed.

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[2] § 11 (a). "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined. . . ."

[3] See Smith *v.* Miller, 226 Mass. 187; Star Braiding Co. *v.* Steinen Dyeing Co., 44 R. I. 8; Collier, Bankruptcy (13th ed.) 414.

[4] Cf. Hill *v.* Harding, 107 U. S. 631; but cf. Remington, Bankruptcy (4th ed.), § 3491.

[5] See In re Geister, 97 Fed. 322.